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MUNICIPAL GOVERNMENT

MUNICIPAL GOVERNMENT

BY

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PREFACE

In the belief that there was a demand for a book on municipal government somewhat comprehensive in its scope and attempting to cover, however incompletely, the entire field, *Municipal Government* has been written. The endeavor has been made therefore to treat both the historical development of city institutions in western Europe and to discover the characteristics which distinguish the social conditions of modern urban populations, in the hope that help might be obtained in the solution of the problems presented by city life.

The fulfilment of the purpose which the author has had in mind has made it necessary to cover some of the ground already covered in books from his pen. This is particularly true of his *City Government in the United States*, from which much of the matter in the present work having reference to the conditions existing in American cities has been taken.

It has been the author's hope, in writing the following pages, that they might both prove of value to that increasing body of students in colleges and high schools, who devote some portion of their time to the study of municipal government and be of interest to that part of the general public, apparently also increasing in number, who are endeavoring to solve the problems arising in connection with urban development.

FRANK J. GOODNOW.

COLUMBIA UNIVERSITY
August 1, 1909.

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MUNICIPAL GOVERNMENT

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CHAPTER I

URBAN GROWTH[1]

The city. We find in all countries large aggregations of persons in small areas which are variously called "cities" or "urban communities." The mere existence of such aggregations presents peculiar phenomena. We ask the questions: How did these aggregations come about? and, How are they constituted? that is, What are the characteristics of urban populations? These questions are of a sociological nature. When we speak of the "city" or "urban community" as a mere aggregation of persons we are therefore using the term in a sociological sense.

But the presence of these aggregations causes problems to arise which are not sociological in character. For these aggregations must have a governmental organization. Not only must they have such an organization but their problems being peculiar, owing to the density of their population, that organization must be different from that which is accorded to rural communities. When, therefore, we speak of a "city" or "urban community" as a governmental organization we are using the term in a political rather than a sociological sense. We are not thinking so much of the reasons why aggregations of persons exist or of the character of their population as of the position which the city occupies as an organ of government and of the political powers which it exercises.

It has been said that the political problems of cities are peculiar. This is due to the character of urban populations.

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[1] Authorities: Weber, "The Growth of Cities," etc.; Hobson, "The Evolution of Capitalism"; Giddings, "The Principles of Sociology."

Therefore, although our attention will be directed to the city as an organ of government rather than as a social fact, it will be necessary for us to consider briefly why cities have come into existence and to ascertain those characteristics of urban populations which can fairly be regarded as having an influence on the governmental and political problems of cities. For only in this way will we be able to reach conclusions of any value as to the solution of the political problems of modern cities.

I. EXTENT OF URBAN GROWTH.

The ascertainment of the character of these conditions and the determination of the form of government suited to them are particularly necessary because these densely populated areas are increasing both in number and in size. One of the observations at the present time most commonly made of the civilization which owes its origin to western Europe is that the cities are increasing in the number of their inhabitants faster than are the rural districts. Thus by the last census of the United States it is shown that in the year 1900 the 160 principal cities contained 25.9% of the whole population of the country. The population of these cities had grown to that proportion of the whole population from 23.6% in 1890. The increase of the population of these cities from 1890–1900 was 32.5% of their population in 1890, while that of the population outside of these cities had been in the same period but 17.2%.

What is true of the United States seems to be true as well of all the states of western Europe. Thus in England and Wales the total urban population, defining that term as the population residing in places of three thousand inhabitants and over, increased in the period from 1881–91 at the rate of 15.4%, while the rural population increased only at the rate of 3%.[1] In France, the urban population, defining that term as the population residing in areas where there were two thousand or more people living in contiguous houses, increased during the period from 1886–91 at the rate of 37.4%. The rate of increase in the preceding five years had been 35.9%. In France in the last ten years the rural population has not only relatively, but absolutely decreased, the actual decrease from 1886–91 having been 420,495.[1] In Prussia the urban population, i. e., the population living in places of two thousand and over, was in 1890 39.38% of the total; in 1895 it was 40.66%.[2] In Germany as a whole the total increase in the population from 1885–90 was 10.7%; in the twenty-five large cities it was 35.5%.[3] In Austria the population increased between 1880–1890 at the rate of 7.91%; in the cities of more than ten thousand inhabitants, at the rate of 33.06%.[4] In Belgium in 1846 the cities of one hundred thousand and over had 6.8% of the population; in 1890, 17.4% and the total urban population was in 1880, 43.1%; in 1890, 47.7% of the total population.[5] In Italy the population of places of six thousand and over was in 1871, 24.93%; in 1881, 27.02% of the total population.[6] In Spain the population increased from 1857–87 at the rate of 13.6%, that of the fifteen cities at the rate of 43%. In fact, there is no state in western Europe in which the rate of increase of the urban population is not greater than that of the rural.

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[1] Weber, "The Growth of Cities," etc., p. 50.

In Australia, also, where western European civilization is to be found, we find the same tendencies. Thus in New South Wales the cities of ten thousand inhabitants contained in 1851, 28.2%; in 1891, 33.6% of the population. In Victoria, the same class of cities had in 1851, 30%; in 1891, 46.1% of the entire population.[7]

In countries not possessing western European civilization we do not find, however, the same conditions. Thus the urban districts contain in Russia proper only 12.5% of the total population; in British India, only 9.22%; while in Bengal, only 4.82% of the population of over 70,000,000 are to be found in the urban districts.[8] In China, however, it is estimated that the fifty-two cities above one hundred thousand have 22% of the population.[9]

Finally, a glance at the decennial census reports made during the nineteenth century will show that the relatively greater increase of the population of the cities is of comparatively recent origin. The statistics relative to this phase of the subject in the case of the United States are not very informing. The rapid, although somewhat intermittent, development of the means of communication may be the cause of the somewhat confusing variation in the rates.[1]

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[1] Weber, Ibid., p. 68.

[2] Ibid., p. 82.

[3] Ibid., p. 86.

[4] Ibid., p. 94.

[5] Ibid., p. 116.

[6] Ibid., p. 118.

[7] Ibid., p. 140.

[8] Ibid., p. 124.

[9] Ibid., p. 129.

Growth of cities a recent thing. When we come to consider the European countries, however, we find very significant facts connected with their urban development. It is seen thus that the period 1821–1851 was in England a period of concentration, and in this period the two decades, 1821–31 and 1841–51, are especially marked. In the first, the rate of increase of most of the English cities was most remarkable, some of them increasing at a rate of 60% and over. This was a period of great industrial activity, the number of pounds of cotton imported having increased from 51,000,000, in 1813, to 287,800,000, in 1832, and 489,900,000 in 1841. It was also during this period that railways were first built. The first railway was built in 1830; by 1840, there were 800, and in 1850, 6,600 miles of railway.[2] In France the urban development began somewhat later than in England. The year 1831 may be taken as the beginning; in 1851, urban population had increased greatly and continued to increase until 1871, when it fell off considerably. This increase is, as in England, coincident with the industrial revolution, which began in France shortly after the political revolution of 1830.[3]

In Germany the concentration of population in cities was not noticed until after 1852,[4] and is particularly marked after 1880.[5] The changes in the industrial system, which seem to have been followed by an increase in the urban population, did not take place in Germany until after 1840. Even as late as 1850, only 5,856 kilometers of railway line had been built. By 1848, however, the industrial revolution was completed. The successful termination of the French war in 1871 made the political union of Germany possible, and was followed by great commercial and industrial expansion.

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[1] Weber, p. 22.

[2] Ibid., p. 52.

[3] Ibid., pp. 76, 77.

[4] Ibid., p. 83.

[5] Ibid., p. 89.

It may thus be said that urban development is a characteristic of modern western civilization, and, in the form in which we find it at the present time, a comparatively modern phenomenon. The problems incident to it are thus new rather than old. Certainly their solution makes more insistent demands than ever before. For never before in the history of western civilization did such a large proportion of the people live in urban communities as at the present time.

II. The Causes of Urban Growth.

Density of population. What now are the causes of this urban growth? First, it may be said that mere density of population is not the cause, since Bengal, with a large population, has a low percentage, while Australia, with a sparse population, has a high percentage of urban population. In the case of Bengal, the occupation of the people is in the main agricultural, and the character of the agricultural system is very primitive; great reliance is placed on manual labor, almost none on machinery. The result is that, notwithstanding the fertility of the soil, the agricultural labor of most of the people is required in order to sustain the population. None, roughly speaking, can be spared for occupations not of an agricultural nature. In other words, the rural districts demand for their cultivation, under existing methods and conditions, the services of practically the entire population.

When, however, we turn to Australia, how different are the conditions! The land is very commonly not adapted to distinctly agricultural pursuits. It is either so arid as to make them impossible, or it is so far away from the market, in which agricultural products may be sold, as to make the raising of distinctly agricultural products unprofitable. It is, however, wonderfully adapted for the raising of cattle, sheep and horses, and markets are readily obtained for live stock and wool. The natural result is that the country is devoted to pastoral rather than agricultural pursuits. Comparatively few people are required to devote themselves to the distinctly rural occupations suitable to the country, i. e., to the direct raising of wool and live stock, and a considerable number of people devote themselves to occupations largely commercial in character, which are necessary in order to market the products raised. The result is that in Australia large urban communities have sprung up as the homes of those who devote themselves to the commercial occupations made necessary by the pastoral character of Australian economic conditions. This result is reached although industry has hardly been developed at all in Australia.

Divorce from the soil. We may say then that urban communities are possible only where economic conditions are such that a portion, at least, of the people living in the country can obtain their livelihood from some occupation, not immediately connected with the soil. As Dr. Weber puts it, cities are possible only where at least a portion of the inhabitants are divorced from the soil.[1]

When trade is bounded by arbitrary political lines, or is local rather than general in character, we may say further, that cities are possible only where there is a back country tributary from a political point of view either to the city itself, in which case, we usually find the form of city known as a city state, of which Venice was at one time a good example, or tributary to the larger state of which the city is a part, in which case we find some form of a national state, such as Rome, after she had extended her influence over Italy, and the modern western states.

Where, however, a world trade has been developed it may well be that a whole country may become urban in character. In such a country we may find cities of great size with no *hinterland* tributary to them, all devoted to commercial or industrial occupations. Such a country may not contain sufficient land under cultivation to sustain its population or to give it raw materials in sufficient quantities to keep its industries alive, but may be obliged to import both agricultural products and raw materials from distant points beyond its boundaries.

[1] Weber, p. 16.

Such is the condition of England and Wales, whose urban population is 72% of their entire population. England imports most of her food stuffs from the United States and Australasia, her cotton in large degree from the United States, and her iron from Spain. She is, thus, able to support an enormous urban population, although she does not produce enough food or raw materials in her own boundaries for the needs of even a comparatively small part of her people. From a political point of view, her position may be a precarious one, but from an economic point of view it is doubtful whether she is at a great disadvantage with the United States where the Lake Superior iron ores and the western wheat fields are far distant from the industrial centers, although they are within the political boundaries of the United States.

We may say, then, that urban communities are possible and only possible where economic conditions permit a portion of the inhabitants, whatever may be the density of the population, to obtain their living out of an occupation not immediately connected with the soil. The divorce of men from the soil is possible, however, only,

First, where agricultural methods are so highly developed that the work of a part of the community will yield products sufficient to support the whole community, or

Second, where new and more fertile lands, from which food and raw materials can be obtained, are subjected to cultivation.

Until such conditions obtain industry and commerce cannot develop to the extent of making possible the existence of the large industrial and commercial classes out of which urban communities are formed. Of course, if at a given time the artisan is offered higher wages than the agricultural laborer, the latter may be tempted to adopt an industrial occupation, but unless the loss in production, due to the loss of the labor of the agricultural laborer, is made up by some improvement in agricultural methods, or unless food stuffs can be imported, prices of food will rise so high as to offset any apparent advantage in increased wages.

Improvement in agricultural methods. Scarcity in agricultural labor will, however, often have the effect of improving agricultural methods. For divorce of man from the soil often results from some change in the commercial or industrial situation by which men are tempted from agricultural pursuits into commerce or industry. This is what actually occurred in England in the eighteenth century. The invention of the spinning jenny and the improvement of the loom made spinning and weaving more profitable than work in the fields. The scarcity of agricultural labor had for its effect great improvement in agricultural methods. Common lands were enclosed. These were better cultivated than they had been. The yield of wheat per acre went up from seventeen to twenty-six bushels per acre. Scientific stock breeding followed. Beeves weighed at the Smithfield market, 370 pounds in 1710, 800 pounds in 1795.[1]

These improvements in their turn rendered unnecessary the labor of as many agricultural laborers as formerly and made it possible for a larger portion of the community than formerly to devote themselves to the new industrial undertakings which sprang up soon after. In 1770, 42% of the people were devoted to agricultural pursuits; in 1841, 22%. Ultimately both occupation was found for the surplus population that had formerly been agricultural in character and inducement was offered to the agriculturist further to improve agricultural methods to offset the higher wages paid the agricultural laborer than would have been paid, were it not for the competition of the factories formed as a result of the great industrial revolution, which began in the last years of the eighteenth century.

The efficiency in agricultural methods, looked at from the point of view of pecuniary results, is often particularly marked in new countries like the United States, where labor is scarce. Thus, it is said, that on some of the great wheat farms in the United States four hundred agricultural laborers will produce as much as five thousand peasant proprietors in an older country like France.[2] Indeed, in some new countries where the population is quite sparse and where the prevailing occupation is agricultural or pastoral, the methods by which the products of the soil are obtained are, when compared with those

[1] Weber, p. 165.

[2] Ibid., p. 149.

employed in older countries, so profitable, that, notwithstanding the fact that commerce and industry may not be, comparatively speaking, highly developed, the percentage of the urban population is very large, larger, indeed, than in countries with a higher industrial and commercial development. This is probably due to the fact that there was in these new countries originally no large agricultural population which had to adjust itself to the new conditions. In older countries, built up before the change in economic conditions which the last century has seen, it takes some time before this adjustment is made. In the meantime, the agricultural population hangs on in the hope that its condition will improve, and changes into an industrial population only in the generation succeeding that in whose life the readjustment of economic conditions has taken place.

The newer countries where we find a small proportion of the people engaged in agricultural pursuits may therefore in reality represent an advanced stage in economic development, rather than an abnormal condition. This is doubtless the case in Australia, where the predominance of the urban population will in all probability continue, until, owing to the opening of new markets, a different sort of agricultural life is possible. In the United States, also, the agricultural population is in large measure engaged in the raising of products for export rather than for home consumption. While here the agricultural population is at the present time predominant, the urban population, as we have seen, is increasing at a more rapid rate. By the time we shall have ceased to export our raw materials the urban population will probably outnumber the rural population.

Urban and rural population. We may conclude, then, that in the economic conditions of modern times a larger urban than rural population is by no means an abnormal or temporary phenomenon, but on the contrary is in new countries as well as, we might even say more than, in old countries a normal and permanent phenomenon.

If this is the case it is somewhat difficult to see how any schemes which may be adopted for getting the people back to the farms will have any great success. Improvements in rural conditions may conceivably result in a proportionally larger rural population than now exists. That population will only have the effect of making keener the present competition in rural districts so far as new markets are not secured or a greater extension of present markets is not made.

Wider markets for agricultural products are a necessary prerequisite for a greater rural population and wider markets for the agricultural products of a given country can be secured only through the growth of cities, the underselling of less favored agricultural districts, or the increase in consumption by existing populations made possible by lower prices. So far as this last contingency may occur the existence of a larger rural population as compared with the urban population is conceivable.

Location of cities. In our discussion so far we have confined our consideration to the general causes of the drift into cities, as it has been called. But if we would know the character and circumstances of city populations, by which their needs and aspirations are conditioned, we must ask the further question; Why do large populations gather in particular spots?

There are various answers to this question. They may all, however, be classed under the general proposition that cities are founded where for some reason or other men come together and stay together. Giddings, in his "Principles of Sociology," classifies aggregations of individuals as genetic aggregations, the cause of which is blood relationship or birth, and congregations, the cause of which is migration. Now, while the former of these causes should not be overlooked, it has had in the past comparatively little influence on the development of urban populations. For in the centuries preceding the nineteenth century the sanitary and other conditions which affect the production and continuation of human life were of such a character in the densely populated areas, that the death rate was greater than the birth rate. The result was that, had it not been for immigration into the cities from the outlying districts, the city population would have decreased instead of increasing, as was actually the fact.[1]

In order, then, that cities may develop, people must come to-

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-ber, p. 231.

gether. But they must not only come together, they must stay together. That is, the motive which causes migration, must be reasonably permanent in character. The cause which attracts population must not be a merely evanescent one. Large numbers of people will be attracted to newly discovered sources of mineral wealth, but they will not remain unless that mineral wealth is of such a character that a reasonably long time will elapse before it is extracted from the earth. Thus, in many parts of Pennsylvania may be found the ruins of villages which were formed because of the discovery of oil wells, but which fell into decay when the wells cease to flow. If, however, the aggregation continues long enough, other forces than whose which were originally responsible for the establishment of the urban community may come into play, and cause not only the continuation of the community, but its further growth. Thus, Oil City, in Pennsylvania, notwithstanding oil wells may no longer exist there of sufficient magnitude to attract a large population, has continued in existence because it is suitably situated for the carrying on of occupations other than the extraction of oil.

The motives which lead people to gather together may be classified as religious and educational, commercial, industrial and political, and cities are formed in particular places because great numbers of individuals are attracted to them by one or more of these motives. It is true, of course, that cities have in the past been formed because they were in a single particular well suited to attract people. Thus, in the south of India, there is a temple near the city of Trichinopoly, in and about which it is said as many as 30,000 persons are gathered together. Lourdes, in the south of France, is another example of a city formed because of religious or at least quasi-religious reasons. Thus, again, we find in our own capital of Washington, an urban community, which was established solely for political reasons, while in Oxford, England, we find a community which could with difficulty remain in existence, were the University around which it has grown up removed from within its midst.

But, as a general thing, cities are established and grow because people are attracted to the places where they are situated for a variety of motives. Around the sites of temples formed for religious worship, trade springs up which thrives on the needs existing, or excited in the people who may come together primarily from religious motives, and ultimately the population devoted to commercial and industrial pursuits may outnumber those who are attached to the temple, or gather for purposes of worship.

Finally, in a world in which the greater part of mankind must earn their bread by the sweat of their brow, economic motives must be recognized as, by and large, the controlling motives of human action. While many cities have thus been founded for other than economic reasons, by far the greater number of cities have either been established, or are able to continue their existence and develop because of their favorable situation for the purposes of trade and industry. Indeed, it is not infrequently the case that places so favorably situated are chosen by priests and educators as places from which religious and cultural influences will be most liable to emanate. This being the case, we must devote a large part of our time to a consideration of the ways in which trade and industry influence both the establishment of cities and the character of the urban population which their pursuit attracts.

CHAPTER II

TRADE AND INDUSTRY[1]

I. TRADE AND COMMERCE.

WHILE trade and industry may be said to be the two most important causes of urban development, at the same time it must be recognized that no very great development of industry is possible without the possibility of trade. Without trade, industry is dependent entirely upon the demands of the local market. Where trade exists which opens up more than merely local markets great industrial expansion is possible. Trade is practically impossible without transportation, which is in its turn impossible without means of communication. These in their turn are impossible where reasonably stable government with its accompanying peace does not exist. We must, therefore, assume that before cities dependent on trade and commerce may exist, man must have reached a stage in his development when war is not the normal condition, and when government has attained some degree of effectiveness. City populations are therefore indicative of a reasonable degree of civilization and political capacity.

Trade and commerce being thus dependent on transportation, we find that trade centers are closely connected with transportation routes. Such transportation routes are of two kinds. They are either water routes or land routes. From another point of view trade routes may be spoken of as natural and artificial; and while it is possible for trade routes by water to be influenced greatly by human activity, as by the building of canals, of which the Suez Canal is the most famous example, at the same time the hand of man is much more apparent when we come to consider trade routes by land. Human activity is seen on the land in the construction of waterways not directly connecting great bodies of water and in the construction of ways in no way dependent on water. Channels of rivers are deepened. Canals which connect rivers are constructed. Roads and bridges are built and tunnels bored through mountain ranges.

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[1] Authorities: Weber, op. cit.; Hunter, "History of British India"; Schmoller, "The Mercantile System."

Breaks in trade routes. Now the main effect of the hand of man is seen in the attempt to do away with breaks in trade routes due to a change in the mode of transport. In rather primitive commercial conditions such changes in methods of transport are very common. In the first place a trade route may be said to be broken at the shore of a large body of water. Water routes must give place to land routes. Again, in primitive commercial conditions the highway must give place to the bridle path, when mountain ranges are to be crossed. The camel must take the place of the horse as a beast of burden when deserts are to be traversed. Great rivers which the engineering ability of the time cannot bridge cause other breaks. Finally, just as on land the wagon is replaced by the pack horse or the camel, so where the river or other inland waterway meets the ocean the ocean-going vessel must be replaced by one of lighter draft.

Now, every time a break in transportation takes place a great deal of subordinate but necessary work is involved which demands the service of many men, and the tendency is for congregations of people to gather at the points where breaks in transportation are found.[1] Later, industrial undertakings spring up because of the good trade facilities and the presence of a large surplus population from which labor may be obtained. This is particularly true of places situated on rivers, where the river may be made use of as a source of power when other than muscular power is usual for industrial purposes. Where, however, steam may profitably be used, such considerations have little effect; for what is then sought more particularly is cheapness of the fuel through the consumption of which steam is obtained.

It has been said that the most marked influence of the hand of man is the doing away with the breaks in the trade routes with which nature provides him. The truth of this statement becomes apparent when we consider the history of the commerce of Europe with the East. The most ancient trade route was from the coast of Asia Minor to the Euphrates River.[1] At the commencement and termination of this route, where in other words the route was broken by the necessary change of vehicle, the greatest cities of the ancient world arose, viz., Tyre and Sidon on the Mediterranean and Babylon on the Euphrates. Later on, when the means of navigation were improved, it was found that a nearly all-water route with the most profitable part of the East could be secured by making the short land journey from the Nile to the Red Sea. Alexandria sprang up where the ships of the Mediterranean had to unload. Still later Venice and Genoa managed to obtain control of the Eastern trade and became the distributing centers at the European end of this route.

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[1] Weber, p. 172.

When in the fifteenth century it was found that an all-water route existed around the continent of Africa and, on account of the further improvement in navigation, could be used, Venice and Genoa declined in importance, and Lisbon, the capital of the country whose adventurous sailors first proved that such an all-water route was practicable, took the place of both Alexandria on the one hand and Venice and Genoa on the other. The break at Alexandria made it impossible for the old route to maintain itself, notwithstanding the alliance of the Venetians and the Egyptians, who attempted by force to prevent the Portuguese from taking advantage of their discovery. Finally, in the middle of the nineteenth century the long-thought-of plan of cutting the Isthmus of Suez was realized and again the Mediterranean cities began to prosper, particularly Marseilles, Genoa and Naples. In the meantime, however, naval engineering had so progressed that vessels of greater size could be used and we find the cities of northern Europe such as Bremen and Hamburg and Antwerp, sharing in the trade with the East. In almost all these cases the prosperity of urban communities is seen to depend on the fact that breaks in the trade route were unavoidable at or about the place where they were situated.

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[1] On the ancient trade routes between Europe and the East, see Hunter, "History of British India," Vol. 1, chap. 1.

Another instance in modern times where the importance of a situation at a break in the trade route was most vividly appreciated is seen in the relations between the English cities of Liverpool and Manchester. Liverpool was established at a place where a break in a trade route was, under existing conditions, unavoidable. Manchester, only a few miles away, did not have this advantage but determined to secure it by artificial means. Notwithstanding the opposition of Liverpool, Manchester obtained an act of Parliament permitting the building of the Manchester Ship Canal through the construction of which Manchester hoped to secure a situation at a place where the trade route would be broken. Manchester succeeded, but in the meantime ocean-going vessels were so increased in size as not to be able to use the canal and thus Liverpool has been able to retain at least a portion of the trade.[1]

What has been shown to be true of natural water routes of trade is just as true of the more artificial land routes. The tendency is by an improvement in the routes to overcome the obstacles offered to trade by nature. This results, as in the all-water routes, in the diminution of the number of breaks in the route. A most marked instance of this tendency is to be seen in the case of the substitution for other means of communication by land of railways, which pierce mountain ranges and cross rivers.

The result, therefore, of the substitution of the more modern means of communication by both water and land is, if no other influences come into play, by diminishing the number of breaks in trade routes to take away from many cities one at least of their *raisons d'être* and to concentrate population in the larger cities. World trade and long trade routes make great cities and the more a city's trade takes on the character of world trade and the longer the trade routes at the break of which it is situated, the greater the city will become, simply because of the fact that it grows at the expense of its rivals.

Railway and customs tariffs. Trade is, in modern as compared with ancient times, carried on under very artificial conditions. Railways and customs tariffs have an important effect upon trade and as a consequence upon cities. Customs tariffs of themselves make breaks in trade routes. If customs districts are small breaks in trade routes are numerous and few large cities can develop. If customs districts are large, i. e., if political organizations have expanded, we find fewer customs houses and therefore greater cities. In large states themselves customs tariffs may be made a means by which cities may be developed. If the government of a particular state desires to concentrate population in a few cities it may do so by limiting the number of its ports of entry and its customs houses. If, however, it desires to scatter its population among numerous cities, it may do so by making a large number of ports of entry and permitting the establishment of bonded routes, by which merchandise may be carried into the interior and examined and the duties on it paid away from the coast or the land frontier.

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[1] As to the importance which mediæval cities ascribed to securing breaks in trade routes where they were situated, see Schmoller, "The Mercantile System," p. 10.

Railways, of themselves artificial trade routes, may be made influences for the concentration of population, not only through the fact that by their mere construction they cause breaks in more nearly natural trade routes to disappear, but as well through the system of rates which may be adopted. Differential rates in favor of one place as against another and a basing point system of rates have, it is believed by most New York merchants, attracted trade from that city to other and in some instances interior points, which have become themselves distributing points for internal or foreign trade. This would not have been the case had such rate systems not been adopted. On the other hand, the tapering rates, as they are called, which seem everywhere to have been adopted in Australia, have, it is said, served to concentrate population in the large centers of Sydney and Melbourne, and have prevented the development of small centers of trade in the interior, whose absence is so marked in the southern continent.

Long trade routes and great cities. We may, therefore, conclude that the modern world trade and long trade routes tend to further the development of the great cities at the expense of the small, but that in the artificial conditions due to customs tariffs and railway rates much may be done to counteract those influences or at any rate to prevent them from having an undue effect.

It would be improper, however, to conclude that trade and commerce are the only causes for urban growth. They are, it is true, the most important, both because the influences of trade and commerce are increasingly centripetal in character as the districts widen over which trade extends, and the trade routes lengthen, and because industry finds little field for activity until trade has been established. But once facilities for trade are provided, industry progesses by leaps and bounds.

II. INDUSTRY.[1]

Household industry. The original kind of industry with which we are acquainted is household industry. Under the system of household industry household wants of an industrial character were supplied by the members of the household, in the main the women, to whom mankind is indebted for most of the rude appliances by which industry was originally carried on. Household industry can be carried on where there is no trade since each industrial unit is self-sufficient. A variety of household industry is the village or manorial system, where there may be a certain differentiation. Particular industries may require all the services of particular individuals. There may be a village shoemaker, or a village tailor, or a village blacksmith. The difference between a strictly household system and a village system of industry consists of course in the fact that under the latter a community arises, between whose members something in the nature of trade exists. But in both the industry is confined to supplying the wants of such a small circle and the trade, such as it is, is circumscribed by such narrow limits as to have practically no influence in attracting an aggregation of people. Such aggregation as exists is of the kind spoken of by Giddings as a genetic aggregation.

Guilds. But in those communities where trade with other communities is favored by their situation, the tendency is for the business of the industrial classes, which have differentiated, to increase. The shoemaker or the tailor or the blacksmith hires persons to help him and the guild or handicraft system springs up.

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[1] See Weber, p. 184.

While in the household system, as has been said, the women are the principal industrial factors, under the village or manorial system the men take a more prominent part, and in the guild system they seem to play the principal role. This is not so much because the women have been relieved of labor, but rather because the new industries that have sprung up can, because of their character, be more effectively attended to by men, who are permitted to attend to them since, because of improvements in agricultural methods, a certain number of men have been relieved from work in the fields.

Domestic industry. A still further enlargement of the market resulted, in times where the only power by which industrial appliances were worked was hand or other muscular power, in what is called the domestic or cottage system. By this the industry returned to the household, but the system differed greatly from what has been called the household system. In the household system the attempt was made to supply the needs of the household only. In the domestic system the members of the household engaged in the industry, sold the product of their industry, and bought with the proceeds what they needed, but did not produce. This system had in common with the guild system the characteristic that the cottage artisan, like the guild member, worked for an employer who in most cases supplied capital in the shape of raw material and wages and sold the product at what he could get for it.

The domestic system was the most highly developed form of industry during the time that the power used in industry was hand or muscular power, and with the exception of a few factories where machinery and workmen were gathered together it was the prevailing form throughout England in the middle of the eighteenth century. Furthermore, even under this system the business of manufacturing was not conducted by a special class which devoted themselves to this work alone. Spinning and weaving were in large degree in the hands of persons who devoted a good part of their time to agriculture and often had near the cottage in which they carried on their industry a plot of land which they cultivated.[1]

The domestic system of industry may not be said to have exercised any very great influence on the concentration of population and cannot therefore be said to have contributed to urban growth. Indeed, in England, it had the contrary effect of diminishing the urban population which had grown up as a result of the guild system, and was strenuously opposed by the cities which saw their industries decline and their guilds diminish in power and importance, as a result of the spread of the domestic system.

Factory system. The next and last stage in industrial development was the factory system. This system was made possible by the application of steam power to manufactures and the invention of such machines as the power loom and spinning jenny, and was distinguished from the system which it superseded by the fact that the artisans had to come to their work, whereas before, in large measure, their work came to them. The centralization of industry due to the factory system had most marked effects on urban development. The world over, the establishment of the factory system has been followed, as we have seen, by a concentration of population in large cities.

Commercial and industrial cities. It would seem, however, that industry, different from trade and commerce, does not necessarily have a permanent and continuing centripetal influence in building up large at the expense of small cities. Thus in the United States all of the 124 cities of the country grew from 1880–1890 at the rate 47.7%, the 28 largest cities at the rate of 44.9%, and the second largest, viz., those less than the largest but of at least 25,000, at the rate of 58.9%. In England in the period from 1881–1891 the cities of from 20,000 to 100,000 population increased most rapidly.[2] In both France and Germany peculiar circumstances have perhaps contributed to make the result somewhat different from that in England and the United

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[1] Hobson, "The Evolution of Modern Capitalism," p. 34.

[2] Weber, p. 50.

States. In France the railways are constructed and operated in such a way as to give predominance to Paris and Paris is of course included in the cities of 100,000 and over. As a matter of fact, however, while all the cities of 100,000 and over show a gain from 1861–91 of 47% those from 20,000 to 100,000 have gained 50%. Those of 100,000 and over, 47%; those of 10–20,000, 42%.[1] In Germany the enormous growth of Berlin, due to its becoming the capital of the newly formed German Empire, gives to the cities of 100,000 the largest rate of growth.

An analysis of the population of the largest cities on the one hand and the smaller cities on the other hand, which we have seen are developing more quickly than the largest ones, would seem to show that the former are rather commercial, while the latter are rather industrial in character. By the twelfth census of the United States the one hundred and sixty cities of the country of at least 25,000 inhabitants had a total population of persons of at least ten years of age of 15,674,181. Of these, 8,420,-909 were engaged in gainful pursuits. Of these 2,473,525 were engaged in trade and transportation, 3,265,402 in manufacturing and mechanical pursuits, 2,129,852 in personal and domestic service, and 462,761 in professional service, i. e., a little over 29% of those engaged in gainful occupations were engaged in trade and transportation and a little under 39% in manufacturing and mechanical pursuits.

In New York, however, while industry claims 37% of the earning population, commerce also claims 37%. In Chicago the figures are, industry nearly 33%, trade and transportation a little over 35%. In both Boston and San Francisco the population engaged in commerce is greater than that in industry; in the former nearly 34% are in commerce, a little over 32% in industry; in the latter nearly 34% are in commerce, nearly 32% in industry.

Philadelphia and Baltimore seem to be exceptions to the rule, being preëminently industrial cities, though among the largest cities in the country. In some of the smaller inland cities, however, the disproportion between the commercial and industrial population is very great. This is particularly true of New England, where in some cities like Worcester and Fall River the industrial population is from two to nearly five times as great as the commercial.

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[1] Weber, p. 75.

Dispersion of population. We may, therefore, conclude that although the largest cities will be with us as most difficult governmental problems the rate of their growth is not in the main to be proportionally so great in the future as it has been in the past. For while we may conceive of greater concentration in industry it is difficult to imagine a much more world-wide trade than we now have. A further extension of trade routes is practically impossible, and unless such an extension takes place favored commercial cities cannot grow at the expense of their less favored rivals as they have grown in the past. The line of attack, therefore, if we are convinced of the necessity of a greater dispersion of population is along the lines of trade and transportation rather than along the lines of industry. Greater decentralization in the transportation and commercial system by taking from favored commercial centers the advantages they now hold in the matter of railway rates will do much to distribute population or at any rate to prevent greater concentration of population so far as that is due to preferential treatment. The concentration of population due to changed industrial conditions will in all probability correct itself as it becomes less profitable to conduct industry in large cities. High rents and taxes will drive industries into the smaller cities if freight rates can be made favorable enough.

CHAPTER III

THE CHARACTER OF CITY POPULATIONS[1]

Migration of population. While in the past the main cause of the development of urban communities is to be found in the migration of persons from the rural districts to places specially well fitted for the pursuit of commerce, trade and industry, it must not be forgotten that city as well as rural populations propagate the human race. An important element in all city populations is to be found in those persons who have been born and brought up in the city. The proportion of such people depends, however, in large measure on the sanitary conditions of the city. If the conditions in city life generally or in a given city are conducive to human mortality it may well be that city life generally or the life of some city in particular may be of such a bad character that the death rate is higher than the birth rate. If that is the case the city is dependent upon migration to it, not only for its increase in population but as well for its continued existence as a city.

We may say that this was the condition of most cities in the European world prior to the opening of the nineteenth century. Thus it is said that in London in the forty years from 1603–1644 there were 363,935 burials and 330,747 christenings.[2] "A German student who investigated the church records of baptisms and burials in several German cities came to the conclusion that on the average there were eighty or ninety births to one hundred deaths in the period from 1550–1750."[3]

The improvement in the sanitary conditions of cities in the nineteenth century due to the discoveries of medical science applied by a more efficient municipal government have, however, brought it about that many cities have at the present time a higher birth than death rate. Indeed, Dr. Weber states that, while in France and Italy the cities do not generally sustain themselves, "in Germany, Sweden, Austria-Hungary, etc., the cities furnish from one-fourth to one-half of their increase, according to size. But in Great Britain immigration has so diminished that even the largest cities provide three-quarters and even more of their increase. In the United States where the cities now show a larger natural increase than do the rural districts, there is still a vast immigration, four or five times as large as the natural increase."[1]

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[1] Weber, op cit.; Hobson, op. cit.; Chapin, "The Standard of Living among Workingmen's Families in New York City"; Spahr, "The Present Distribution of Wealth," etc.

[2] Weber, p. 232.

[3] Ibid., p. 234.

Dr. Weber says,[2] as to the character of the migration to cities: "Migration is predominantly a short-distance movement, but the centers of attraction are the great cities, toward which currents of migration set in from the remotest counties. The larger the city, the greater its power of attraction, i. e., the larger its proportion of outsiders and the more distant the counties or districts which contribute to it. . . . Most migrants are young people, so that about 80% of the adult population of great cities is of outside birth. Two-thirds of the immigrants have lived in the great city less than fifteen years."

In urban populations we have thus not only a set of people who have either come to the city or stayed in the city because of the attractions of trade and industry, but as well a population who for the most part have no important historical traditions, and no local associations which take their root in childhood. In a rural society attachment to the soil and a conservative attitude towards things in general may develop in a way which is not possible in the conditions of modern city life. The lack of historical association with the environment, which is characteristic of all city populations, is particularly noticeable in the case of the large cities, since their power of attraction is greater and their sanitary conditions are apt to be worse than those of the smaller cities.[3]

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[1] Weber, p. 246.

[2] Ibid., p. 283.

[3] Bailey, "Modern Social Conditions," p. 243.

In so far, however, as cities do not recruit their population from the outside, the disadvantages resulting from the kind of city population, as it has been shown to be constituted, do not exist. Where a city owes its existence or increase to the excess of its birth over its death rate we have a population which does not to that extent have the characteristic of a bird of passage. Long historical association with the city and a stronger neighborhood feeling make a less heterogeneous population. The population in the cities of Germany and England should be less heterogeneous than that in those of France, Italy and the United States.

Heterogeneity of city population. Further, if a city population so far as it is derived from immigration into the city comes from a great distance from the city, particularly if it comes from foreign countries, we may expect a still greater degree of heterogeneity. Difference of language, difference of religion, difference of morals and difference in general habits, all tend to produce a population of extreme heterogeneity. Such is the population in the cities of the United States. By the United States census of 1900 in the cities of at least 25,000 inhabitants those of foreign birth constituted 26% of the population. This percentage reached as high as 37 in New York, 34.6 in Chicago, 47.7 in Fall River, 45.7 in Lawrence, Mass., 42.6 in Manchester, N. H., 40.9 in New Bedford, 46.4 in Passaic, N. J., and 44.4 in Woonsocket, R. I. It will be noticed that highest percentages of foreign born are found in the distinctly industrial cities, particularly in New England.

A comparison of these figures with those of the previous censuses as far back as 1850 shows, however, that the percentage of aliens, while increasing in the country at large, has decreased in the cities.[1]

To this heterogeneity, due to the presence of persons of foreign birth in large numbers, must be added that due to the presence of the negro. The percentage of negroes in all the one hundred and sixty cities of at least 25,000 is rather small, being only 5.8, but in certain cities it is very large. In Augusta, Ga., it is 46.9; in Charleston, S. C., 56.5; in Chattanooga, Tenn., 43.5; in

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[1] Weber, p. 305.

Jacksonville, Fla., 57.1; in Memphis, Tenn., 48.8; in Mobile, 44.3; and in Richmond, Va., 37.9.

Excess of women. Finally, it is to be noted that the female sex predominates in cities.[1] Thus while in the United States as a whole the native born males are 50.5% as against 49.5% females, and the foreign born males are 54.4 as opposed to 45.6 foreign born females, in the one hundred and sixty cities of at least 25,000 inhabitants the population is 49.8 males as opposed to 50.2 female. This disproportion of the female sex in cities is unquestionably due in large degree to the presence in the cities of many female domestic servants. Thus the census figures, 1900, show that 833,941 women were so occupied in the one hundred and sixty cities. It is due, however, as well to the fact that women in the cities are very largely engaged in commercial (in 1900, 339,602) and industrial (in 1900, 723,903) pursuits. In the country outside of these cities in the same year there were only 163,972 women engaged in commerce, in industry only 589,301, while agricultural pursuits claimed the services of 977,336. To put it in another way, there was one woman to almost every ten men engaged in agriculture, one woman to somewhat over four men in industry, and one woman to nearly eight men in commerce.

Further, while in 1900 throughout the country as a whole about 36% of the men and 37% of the women were married, in the cities of at least 25,000, 41% of the men and nearly 37% of the women were married. Inasmuch as there are more women in the cities than there are men, but a smaller percentage of the women are married, there are in the cities many more unmarried women than unmarried men. At first blush it would appear that the women in the gainful pursuits of a commercial or industrial character must be unmarried rather than married. But before reaching any such conclusion it must be remembered that personal and domestic service calls for a large portion of the unmarried women. Indeed, in 1900 there were more women in domestic service than in industry in the cities of twenty-five thousand inhabitants and over. Therefore it is highly probable that our cities call for the services of many more married women than does the country outside of the cities.

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[1] Dr. Weber in summing up his conclusions on this point says (p. 299): "The excess of females in any population is usually ascribed, first, to the heavier mortality of male than female infants, which within the first year usually effaces the superiority of male births. Then comes the great mortality of adult males due to the dangers of their occupations, as well as to vice, crime and excesses of various kinds which shorten life. Now, all these forces are accentuated in the cities, producing a greater excess of females there than elsewhere, even without the influence of immigration, which increases the surplus of women [who are greater migrants than men to the cities, see Ibid., p. 284] in cities. In the cities, also, the superiority of male births over female births is smaller than in the country."

Employment of married women. The conclusion that married women in our cities are in large degree occupied in the gainful pursuits connected with commerce and industry is corroborated when we consider the figures as to the occupation of women in particular cities. Thus in Philadelphia, which we have seen is an industrial city, there were in 1900, 531,626 females over ten years of age. Of these, 147,653 were reported as engaged in gainful occupations, of whom 52,057 were in domestic service, 65,325 in industrial, and 22,270 in commercial pursuits. That is, one-third of the women were working and one-eighth were employed in industry. In the industrial cities given up to the textile industries the figures are much more striking. Thus, in Fall River there were 42,818 women, of whom 17,728 were in gainful pursuits, and 14,556, or one-third, in industry. In Lawrence, Mass., there were 25,986 women, of whom 10,143, i. e., two-fifths, were employed and 7,671, or nearly one-third, in industry.

Infant mortality. The employment of married women in industry would seem to have an important and deleterious influence on the discharge by the family of its chief function, viz., the care and nurture of children. This is shown by the fact established in the United States census of 1900 that in the cities particularly devoted to the textile industries where very large numbers of women are employed, the rate of infant mortality is much larger than in those cities whose industry is of such a character that large numbers of women are not employed. The following tables taken from the special mortality tables of the United States census show this to be the fact:

			Death rate per thousand of children under five.
	Fall River, Mass.		
Population	104,863		
Females	42,818	1890	99.6
In industry	14,556	1891	107.5
or 33%		1892	106.6
		1893	108.5
		1894	117.2
		1895	99.9
		1896	117.2
		1897	108.3
		1898	83.6
		1899	94.5
		1900	92.1
	Lawrence, Mass.		
Population	62,559	1890	120.5
Females	25,986	1891	93.3
In industry	7,671	1892	112.2
or 29%		1893	97.4
		1894	74.1
		1895	80.1
		1896	77.4
		1897	82.3
		1898	79.
		1899	86.3
		1900	78.6
	New Bedford, Mass.		
Population	62,442	1890	84.1
Females	26,286	1891	99.
In industry	6,001	1892	96.9
or 22%		1893	110.
		1894	100.
		1895	86.9
		1896	107.1
		1897	105.
		1898	83.5
		1899	74.1
		1900	84.6
	Philadelphia.		
Population	1,293,697	1890	76.2
Females	531,626	1891	79.8
In industry	65,325	1892	84.6
or 13%		1893	78.
		1894	74.

			Death rate per thousand of children under five.
	Philadelphia (*continued*).		
		1895	72.
		1896	72.5
		1897	62.2
		1898	63.9
		1899	55.1
		1900	61.6
	Minneapolis.		
Population	202,718	1890	52.
Females	78,763	1891	47.8
In industry	5,151	1892	49.7
or 7%		1893	41.5
		1894	49.4
		1895	43.9
		1896	34.3
		1897	27.8
		1898	32.7
		1899	28.2
		1900	30.2
	Columbus, Ohio.		
Population	125,560	1890	53.2
Females	51,591	1891	45.1
In industry	3,378	1892	39.9
or 6%		1893	45.4
		1894	47.3
		1895	48.2
		1896	43.
		1897	34.7
		1898	32.5
		1899	29.6
		1900	35.4

The employment of married women which is so common in cities, particularly those of an industrial character, must exercise in other directions than the care and nurture of children an important influence on the home life of a large part of the city population. The family must, in the nature of things, where the mother is continually absent from home, come to be of a different character from what it is under other conditions.

The family in cities. Another important influence on the family or home life of a large part of the urban population is to be found in the degree to which the family, owing to housing conditions, is a domestic unit. Under the influence of the factory system, which we have seen has been so commonly adopted in cities, it has naturally ceased to be the industrial unit. What now are the conditions in cities which affect it as a domestic unit? We can get some idea of these conditions by considering the number of persons in a dwelling.

The census of 1900 shows that in the country as a whole the average number of persons to a dwelling is 5.3. In the one hundred and sixty cities of at least twenty-five thousand inhabitants the average number is 6.8. In the city of New York it is 13.7, while in the boroughs of Manhattan and the Bronx it is 20.4. The average number in the other large cities is as follows: Chicago, 8.8; Philadelphia, 5.4; Boston, 8.4; Baltimore, 5.7; Pittsburg, 6.3; San Francisco, 6.4; St. Louis, 7; Buffalo, 7.1; Cincinnati, 8; Cleveland, 6; Detroit, 5.5; Indianapolis, 4.7; Milwaukee, 6.2; Minneapolis, 6.4; New Orleans, 5.4.

A consideration of these figures would apparently lead to the conclusion that in the largest cities, with the exception of Philadelphia, there is a crowding of the city population which must have an important influence on the family as a domestic unit, but that in Philadelphia and the second grade of cities conditions are little if any different in this respect from what they are in the open country. An investigation recently made of the standard of living of workingmen's families would seem to show that, the larger the city, the larger is the proportion of the family income which goes for rent, and the smaller are the family quarters. Thus, in the borough of Manhattan in New York City it was found that on the average twenty-four per cent. of the income of the families investigated having an income of $600 to $700 went to the payment of rent. In Syracuse and Rochester, however, the percentage is twenty.[1] Again, in Rochester, for example, apartments of seven or eight rooms are the rule, while in the borough of Manhattan seventy-one per cent. of the families with an income from $600 to $800 which were investigated lived in three rooms.[2]

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[1] Chapin, "The Standard of Living among Workingmen's Families in New York City," p. 272.

[2] Ibid., p. 273 and p. 77.

Inequality of economic conditions. The conditions of city life would seem also to have an influence on the equality of the distribution of property. An indication of their effects may perhaps be seen in the degree to which people in the cities as compared with people in the country own their own homes. For it may be said that the first important investment of the average man of family is the purchase of a home.

The United States census of 1900 shows that 64.6% of what are called "farm families" own their own homes, while only 35.6% rent their homes. In the case of families other than "farm families" the figures are almost reversed. Only 36.3% of such families own their own homes, while 63.7% rent their homes. In the largest cities the percentage of families owning their own homes is almost incredibly small. Thus, in New York only 12.1% own their homes. In the boroughs of Manhattan and the Bronx the percentage is only 5.9%, while only 2.3% own them free and clear of mortgage.[1]

In the country at large less than one-half the families do not have property. In the City of New York two-thirds have no property.[2]

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[1] The figures in some of the other large cities in the United States are as follows:

Cities.	Owning Homes.	Free from Mortgage.
Baltimore	27.9 per cent.	20.5 per cent.
Boston	18.9 "	9.2 "
Buffalo	32.9 "	15.8 "
Chicago	25.1 "	11.9 "
Cincinnati	20.9 "	13.9 "
Cleveland	37.4 "	21.3 "
Detroit	39.1 "	22.5 "
Indianapolis	33.7 "	18.1 "
Milwaukee	35.9 "	16.5 "
Minneapolis	28.7 "	16.1 "
New Orleans	22.2 "	19.1 "
Philadelphia	22.1 "	12.1 "
Pittsburg	27.2 "	15.2 "
San Francisco	24.1 "	16 "
St. Louis	22.8 "	14.2 "

[2] Spahr, "The Present Distribution of Wealth in the United States," p. 56.

Age of urban populations. Of the 75,793,911 persons whose age was known in the United States in 1900, there were:

Under five years	9,170,628,	or 12	per cent.
5–9	8,874,123,	or 11.7	"
10–14	8,080,234,	or 10.6	"
15–24	14,991,105,	or 19.8	"
25–34	12,085,480,	or 17.2	"
35–44	9,211,947,	or 12	"
45–64	10,399,976,	or 13.7	"
65 & over	3,080,498,	or 4	"

In the one hundred and sixty cities of at least 25,000 inhabitants there were 19,718,312 persons. Of these the age of 61,140 was not known. Of those whose age was known, viz., 19,657,172, there were:

Under five years	2,054,790,	or 10.4	per cent.
5–9	1,989,341,	or 10.1	"
10–14	1,772,883,	or 9	"
15–24	3,825,831,	or 19.9	"
25–34	3,816,547,	or 19.9	"
35–44	2,840,338,	or 14.4	"
45–64	2,708,584,	or 13.8	"
65 & over	648,858,	or 3.3	"

These figures would seem to show that the cities have the most energetic and productive portion of the population considered from the point of view of age. There is not the same percentage of very young children or very old people as in the rural districts, but a considerably larger percentage of people between the ages of twenty-five and sixty-five.

Dr. Weber in summing up the situation for cities both American and European where the conditions are the same as here, says: "As the result of the presence of a relatively larger number of persons in the active period of life in urban populations one would expect city life to be easier and more animated, the productive classes being large and having a smaller burden to bear in the support of the non-productive class." This advantage that city life offers is offset to an extent at any rate by the presence in cities already noted of an undue proportion of women, a large proportion of whom are reported in the census of the United States, for 1900, as widows. The percentage of widows to all the females in the country as a whole is 7.3; to all the females in the one hundred and sixty cities of at least 25,000 inhabitants, is 12.4. This percentage is greater than it seems at first sight because, on account of the lack of children in the cities, there is a larger proportion of females of marriageable age in the cities than in the rural districts.[1]

Physical conditions of urban populations. Formerly it was believed by many that city life had a bad influence on individual character, both from the physical and from the moral point of view. It is doubtful, however, if there is anything in city life which inherently and inevitably conduces to physical or moral degeneracy. So far as the former is concerned it may be pointed out "that the believers in town degeneracy base their arguments on antiquated statistics. There can be no doubt that down to recent times the health of the urbanite compared unfavorably with that of men who worked in the open air, just as their death rates did, but in the last quarter century the evidence in both cases has changed. In 1874, a French authority declared that fitness for army service depends less on density of population than on wealth, climate, daily life. Health and vigor may always be preserved if men in cities will make proper provision for open air, exercise, cleanliness, and pure food supply."[2]

It is, however, true that the death rate of cities is still higher than that of the rural districts, notwithstanding the fact that cities contain a population which, from the point of view of age, is more vigorous than the population of the rural districts. The last census of the United States shows that the death rate of the rural districts for which statistics were obtained was 15.4 per thousand, that for the urban districts, 18.6 per thousand.

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[1] Dr. Weber in commenting on the age of city populations further remarks: "One would also expect to find more energy and enterprise in cities, more radicalism, less conservatism, more vice, crime and impulsiveness generally. Birth rates should be high in cities and death rates low on account of age groupings" (p. 304).

[2] Weber, p. 395. Dr. Weber gives in a note certain statistics relative to the three departments in France having the densest population and comparing them with the three having the sparsest population. In these statistics it is shown that the number of men who had to be examined to secure one thousand soldiers was less in the former than in the latter.

Moral conditions. It is extremely difficult to obtain an exact idea as to the relative morals of urban and rural populations. It is almost everywhere the case that the statistics of crime, which are almost the only statistical measure of immorality that we have, show that crime is more common in the cities than in the rural districts. It is to be remembered, however, that the opportunities for certain classes of crime are much greater in the cities than in rural districts, and that the greater number of crimes which we find in the urban districts may be due to the greater temptation to which urban populations are exposed rather than to any greater immoral tendencies on their part. The vast majority of crimes in the city are against property, and so far as we are able to compare the statistics of cities with those of the rural districts, we find that the excess in the number of crimes in urban districts is almost altogether due to the greater number of such offenses. When, however, we come to consider crimes against the person, we find that in the cities these crimes are relatively rather less than they are in the country.[1]

Intellectual conditions. While the urban populations may be regarded as having perhaps a slightly greater tendency to immorality than the rural populations, they are from the point of view of education in a better position. Almost everywhere it is the case that city schools are better and more numerous than in the rural districts. Further, the statistics of illiteracy in the United States show that "with very few exceptions (New York City, Pittsburg, Cleveland and Detroit), the cities have a better educated population than the rest of the state in which they are situated. The difference in favor of the cities is in many instances very marked. . . . There can be no doubt about the superiority of the city schools, both primary and secondary."[2] By the United states census of 1900, it was shown that 10.7% of the entire population over ten years of age was illiterate, while in the one hundred and sixty cities of at least 25,000 inhabitants, only 5.7% were illiterate. But as Hobson points out, "The education derived in schools is . . . only a part of the education men receive. Perhaps the most valuable part of a man's real education, looked at from the broadest point of view, is that which he obtains out of school in the conduct of the ordinary affairs of life. If we look at the matter from this point of view it must be said that the greater opportunities for social intercourse afforded by city life tend to open to the city population resources which are denied to the countryman. On the other hand, it is to be remembered that the distractions of city life are so great that the city dweller is apt to be more superficial than the rural inhabitant and less able, as a result of the education which he receives along all lines, to develop as a well-rounded individual. Scattered and unrelated fragments of half-baked information form a stock of "knowledge" with which the townsman's glib tongue enables him to present a showy intellectual shop-front. Business smartness pays better in the town, and the low intellectual qualities which are contained in it are educated by town life. The knowledge of human nature thus evoked is in no sense science, it is a mere rule-of-thumb affair, a thin mechanical empiricism. The capable business man who is said to understand the "world" and his fellowmen, has commonly no knowledge of human nature in the larger sense, but merely knows from observation how the average man of a certain limited class is likely to act within a narrow prescribed sphere of self-seeking. Town life, then, strongly favors the education of certain shallow forms of intelligence. In actual attainment the townsman is somewhat more advanced than the countryman. But the deterioration of physique which accompanies this gain causes a weakening of mental fiber: the potentiality of intellectual development and work which the countryman brings with him on his entry to town life is thwarted and depressed by the progressive physical enfeeblement. Most of the best and strongest intellectual work done in the towns is done by immigrants, not by town-bred folk."[1]

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[1] Weber, pp. 401, et seq.

[2] Ibid., p. 398.

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[1] Hobson: "The Evolution of Modern Capitalism," p. 339. Mr. Hobson considers that life in the city is on an average of shorter duration than in the country, and calls attention on page 335 to certain French statistics with regard to Paris, which would prove his contention. He also con-

Conclusions. An analysis of the character of urban populations would lead us to the following conclusions:

First. The population of cities is actuated by commercial and industrial motives. As Mr. Hobson says,[1] "The modern town is a result of the desire to produce and distribute most economically the largest aggregate of material goods; economy of work, not convenience of life, is the object. Now, the economy of factory coöperation is only social to a very limited extent; anti-social feelings are touched and stimulated at every point by the competition of workers with one another, the antagonism between employers and employed, between sellers and buyers, factory and factory, shop and shop. . . . The town as an industrial structure is at present inadequate to supply a social education which shall be strong enough to defeat the tendencies to anti-social conduct which are liable to take the shape of criminal action."

Second. This population is perforce heterogeneous in character, and the larger the city the greater is apt to be the heterogeneity.

While the excessive individualism and heterogeneity of urban populations tend to make difficult social coöperation, it must be remembered that the presence in a small area of many persons makes the matter of their organization for the purpose of realizing some ideal much easier than it would be in the sparse population of the rural districts. The spread of trade-unionism in the cities is a good illustration. If then the ideals of city populations are distinctly social in character a real social coöperation is easy of accomplishment in cities. If on the other hand the ideals of city populations are individualistic rather than social in character, the ease of organizing individuals having the same individualistic aims may result in the formation of distinct classes actuated by class rather than by social interests. And the greater the heterogeneity of the population the greater the liability of the formation of these classes. If we have great diversity of nationalities or races, classes formed of

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siders that life in a city is, as he expresses it, "of inferior physical quality while it lasts."

[1] "The Evolution of Modern Capitalism," p. 340.

the individuals of the same nationality or race are apt to be found. Thus, if the government is a popular one, we shall find in the public prints frequent reference to the German, the Irish, or the Jewish vote. If there is a distinction of religion we find in the same way references to the Roman Catholic or the Protestant vote. Where racial and religious differences coincide the strength of the class distinctions and feelings will be greater. If there is a great inequality in the distribution of wealth or a marked division of the people into taxpaying and non-taxpaying voters we are apt to find organizations of taxpayers who oppose, from a purely selfish point of view, expenditures demanded by the non-taxpaying classes, who may through their votes control the political situation in the city, and because of the fact that they do not directly pay taxes advocate the expenditure of city money without sufficient regard for the financial resources of the city.

City life with its individualism and heterogeneity would seem thus to further the development of individual and class interests rather than a true social idealism.

Third. City populations have as compared with rural populations no historical associations with the cities in which they live. Neighborhood feeling is not liable to be strong.

Fourth. Being composed in large measure of young people or people of middle life, city populations are radical rather than conservative in their tendencies; they are impulsive rather than reflective and are considerably more inclined than rural populations not to have regard for the rights of private property.

Fifth. City populations are more productive than rural populations. They can, therefore, endure a higher rate of taxation. With the greater productivity they also contain probably a smaller proportion of the dependent classes, though the presence in cities of such a large percentage of widows brings it about that there will be a large dependent class due to the death of the principal breadwinner of the family.

Sixth. City populations contain a greater proportion of criminals than the rural districts, but there are reasons for believing that on the whole they are not much if any less virtuous than rural populations.

Seventh. City populations are better educated than rural populations in the sense that a greater proportion of city than of country people can read and write and that their distinctly literary educational opportunities are greater. But because of their industrial character they are probably less capable of taking broad views than countrymen. For the factory system which has so universally been adopted in cities tends, on account of the minute division of labor which is its accompaniment, to cultivate expertness in narrow lines rather than breadth of view.

Indeed, mere life in cities tends to cultivate a certain helplessness. For in the city so much is done for the city dweller as a result of some sort of social action in which the individual participates, if at all, only in a very indirect way, that the individual may easily lose his capacity for action. Thus, if he desires to go from one part of the city, a public conveyance of some sort is at hand to take him a part, if not all, of his journey. If a fire breaks out, a professional force is at hand to put it out. If disorder breaks out, again a professional police is ready to put it down; and so we might go on.

Eighth. Property is much more unequally distributed in the cities than in the rural districts. We find more very wealthy and more very poor than in the country districts.

Ninth. Family life is different in the cities from family life in the rural districts. In large cities a large part of the population is often crowded together. In industrial cities where a large proportion of married women work in factories, the family does not properly discharge its most important function, viz., the care and nurture of the children, and the rate of infant mortality is very high.

Tenth. The health of city populations is on the whole not so good as is that of rural populations. The death rate is almost everywhere higher in urban than in the rural districts, although the cities contain more than their due proportion of the most vigorous part of the population.

Effect on political problems. These characteristics of urban populations should be borne in mind in discussing the political problems connected with city life. For unless this is done the successful solution of these problems will be well nigh impossible.

Furthermore, it must always be remembered that because of its economic conditions the character of the population of a given city may be quite different from that of another. A solution of the political problems of one city may be quite successful, but the attempt to apply the same methods in some other city may be followed by failure simply because the conditions of its population are different.

The political problems of cities may be classified under three main heads:

First. The position of the city as an organ of government.

Second. The functions of a social character which must be discharged in a city because of the character of its population.

Third. The organization to be adopted for the discharge of the functions which must be discharged by the city in its political capacity.

Political position of city. The conditions of a city's population have an important bearing on all these questions. Thus, the solution of the problems connected with the position of the city in the governmental system is dependent upon the determination of the question whether the population of a special city is fitted to take upon its shoulders the burden of conducting the government of the city. And because we may decide that the conditions existing in certain cities or classes of cities are such that local self-government may wisely be permitted, it by no means follows that the same rule is to be applied to all cities. Again, what may be proper for the cities of one country may not be proper for the cities of another country where, for one reason or another, the conditions of urban life are different. Therefore a comparative study of municipal institutions must be pursued with due regard to the actual conditions existing in the cities of different countries as ascertained by observation and statistical investigation, and conclusions derived from an examination of specific sets of conditions may be applied to other sets of conditions only after hesitation and with great caution.

Functions of cities. What is true of the first set of problems is just as true of the second. The social functions which must be discharged in a particular city or class of cities must depend upon the character of its or their population. A city, a large proportion of whose families live in their own homes, may be entrusted with the exercise of larger powers of taxation and borrowing money than one in which there is a small percentage of home-owners, particularly if the main tax is imposed on the owner and not on the occupier. Where there is a large proportion of voters who do not knowingly feel the consequences of their extravagance, extravagance is apt to occur.

Again, a city where many of the married women are engaged in occupations which take them daily away from their homes must ultimately, if no remedy for such a state of things is found through private initiative, extend its activity so as to care for the young children who will otherwise die of neglect.

A city whose inhabitants are crowded together, where many are living in one dwelling as a rule, must exercise large powers in the domain of public health administration, if the spread of contagious diseases is to be prevented, and conditions favorable to health in general are to be secured.

In either of the contingencies just noted the city must extend the activity of its school system so as to do for its older children, through school playgrounds, roof gardens and similar institutions, what they might secure for themselves or through the family and the home were conditions different.

Municipal organization. Finally, the character of a city's population must have an effect upon its actual governmental organization. The word "actual" is used advisedly, for the formal organization with which the law may have provided a city under a mistaken idea that this organization is suited to its conditions will be so modified by the play of extra-legal forces that the real governmental system will be quite different from the one incorporated in the law and studied by the ordinary student of municipal affairs. If boss rule tends to develop in the conditions to be found in modern cities, real boss rule will be found, however democratic the legal form of the government is.

Now, it is often the case that where the real governmental system differs from the system which is theoretically in existence evils develop which most seriously impair the efficient administration of city affairs. The development of these evils is due in degree to the fact that methods adopted in the formal system to ensure the realization of the popular will and official responsibilty for acts of government are not of such a character as to realize the ends sought in the system of government which actually exists. If, however, the formal system of government has due regard for the conditions existing in the city, the endeavor will have been made to obtain in the first place a clear understanding of urban conditions as urban conditions, and not as merely a fractional part of general social conditions, and to provide a governmental organization suited to these conditions. The attempt will not have been made, for example, to give a city a system of government which is a mere copy in miniature of the kind of government adopted for the state at large, nor to base the government of the city upon the principle of universal suffrage merely because that principle has been adopted in the government of the country as a whole. The conditions in the country as a whole may be quite different from those in the city as to equality in the distribution of wealth as well as in other respects. Or, if it is considered that the principle of universal suffrage is so firmly imbedded in the feelings of the people as to make the idea of changing it in any way incapable of realization in the near future, the attempt will have been made so to arrange the system of taxation that the greatest possible number of voters personally pay taxes and know when they pay them in order that the development of classes of taxpaying and non-taxpaying voters be so far as possible prevented.

Municipal development. Enough has been said, it is believed, to show how necessary it is that the governmental system obtaining in a city be suited to the conditions of life in the city. The question now comes up: What in a general way is the form of government suited to urban conditions as they present themselves in most cities? While the question as stated makes no allowance for peculiar local conditions it is believed that we can outline a system of government suited for most cities, which by emphasizing only the usual needs of city life, may be made so general in character, that it may by local action be adapted to the local and peculiar needs of a particular city.

With this preliminary explanation let us then consider what sort of a system of government is suited to urban conditions in general. The answer to this question is difficult, because of the fact that as yet there may not be said to be by any means a universal agreement by students as to the effect of social conditions on government in general. Particularly is it true that no such agreement exists among students of municipal government either as to the effect of urban conditions on city government, or even as to the significance for purposes of city charter-making of the facts as to city conditions revealed by census and other statistics. Few successful attempts have been made by sociologists or others to formulate what has been termed the psychology of society. We have a pretty well-developed individual psychology, but the science of social psychology is a new one, and such results as have been obtained from a study of social psychology must be used with great care. Laboratories for experimental social psychology are almost impossible of establishment. The only way, therefore, in which the inductive method may be used is to study the past. Through such a study we may be able to formulate certain general principles, which may, *prima facie*, have much to commend them.

CHAPTER IV

THE CITY-STATE [1]

THE different positions which the city has occupied in political society may be classified under three general heads. In the first place, the city is seen in the form which is called the "city-state." In the second place, it is found as an administrative district of a larger state occupying a position similar to that occupied by other administrative districts, whether they have an urban or a rural population. In the third place, it is recognized as possessing certain rights peculiar to itself, in the exercise of which it is distinguished from other administrative districts.[2] In our consideration of the position of the city in political society we shall devote attention in the first place to the consideration of its position as a city-state.

The basis of all government in the ancient European world was the city-state. The city-state was an organization formed by people for the most part descended from the same stock and worshipping the same gods which were peculiar to the particular state. Indeed, one of the most important reasons for their organization as a political body was the maintenance of the temples and altars at which they conducted their worship.[3]

The city-state was composed of both urban and rural districts; that is, in the city-state no distinction in political organization was made because of the presence of a great number of people in a small area. The original city-state, indeed, was rather rural than urban in character, but the natural congregation of inhabitants about the temples and altars had the result of causing what bore a strong resemblance to urban conditions in different parts of the territory. Furthermore, these little urban communities because of their religious significance occupied a leading position in the whole social system. The political power in the city-state was therefore centered in the urban rather than in the rural districts.

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[1] Authorities: Fustel de Coulanges, "La Cité Antique"; Fowler, "The City-State of the Greeks and Romans"; Hegel, "Geschichte der Städteverfassung von Italien"; Liebenam, "Städteverwaltung im Römischen Kaiserreiche"; Von Gierke, "Das Deutsche Genossenschaftsrecht," Vol. I; Viollet, "Institutions Politiques de la France"; Dareste de la Chavanne, "Histoire de l'administration française," chap. 6; Lavisse et Rambaud, "Histoire générale," Vol. II, chap. 8.

[2] Cf. Wilcox, "Outline of the Study of City Government."

[3] Cf. Fowler, "The City-State of the Greeks and Romans."

While the city-state was, from one point of view, very homogeneous in character, because its people were in large degree descended from the same stock, the general conditions of the ancient world brought it about that there was great economic and social heterogeneity in the population of most city-states. This was due to slavery, which was the labor system of the ancient world, and to the existence of two very distinct classes, namely, the patricians and the plebeians.

The Roman city-state. While the city-state was as characteristic of Greece as it was of Rome, we shall confine our attention to the Roman city-state, since the influence which Greek conditions may have had upon the development of city government was exerted upon European political ideas through the adoption of Greek ideas in Roman civilization.

The city in the Roman Empire. After the original city of Rome had extended its influence through Italy, there were at first three kinds of municipalities. There were, in the first place, what were called colonies, which had been founded in order to secure the obedience to Rome of the districts in which they were founded. The organization of these was modeled on that of the mother city. The original Roman colonists were regarded as a sort of privileged aristocracy, similar to the patricians at Rome. By the selection of the most prominent of them was formed a body which came to be known as the *curia,* similar to the Roman senate. By the side of this *curia* were the *duumvirs,* officers who resembled the Roman consuls, while all of the free male inhabitants of the city formed an assembly commonly spoken of as the *comitia.*

The second class of cities were the *municipia,* which presented different forms of the original Roman organization, the differences depending upon the degree to which the inhabitants of the municipalities were regarded as possessing Roman citizenship.

The third class of cities were the allied cities. These really stood outside of the Roman state and their organization was governed by their own local conditions and laws, their relation to Rome being that of a greater or less subordination.

As Rome extended her influence over all of Italy, all cities came to be treated alike. The first important attempt to impose upon all the cities of Italy a universal form of municipal organization and a law of municipal relations of universal application is to be found in the Tabula Heraclensis, supposed by Savigny to be the work of Julius Cæsar. After this law was enacted Italy was divided into districts known as *oppida*.[1] These *oppida* comprised, as did the old Roman city-state, urban communities proper and smaller adjacent communities, which, where they were urban in character, were known as *vici*, or *castella*, and rural communities known as *pagi*. The organization of this type of urban community was thus very like that found in the original city of Rome and in the colonies which Rome established.

During the first two centuries of the Empire the cities of Italy enjoyed great prosperity. This was due in large measure to the development by Roman jurists of the idea of the juristic personality of the cities. Although cities had, as a result of the formation of the imperial government, lost their independent position and although the conception of government held by the Romans had changed, so that the city-state had become a part of a greater system, at the same time the recognition of their juristic personality permitted them to hold large amounts of property of their own, and to live a life which, from many points of view, was separate and apart from that of the Roman state as a whole.

Attention has been called to the original existence in the Roman city-state of a somewhat heterogeneous population. This heterogeneous character of the population was, after Rome became predominant throughout the Mediterranean world, greater than before because of the greater freedom of migration which was possible to all the nationalities and races of the Mediterranean basin and because of the great number of alien slaves brought into the Italian peninsula. This heterogeneity made social coöperation more difficult, and we find that during the first two centuries of the Empire the municipal organization showed a most marked tendency to fall into the hands of the property-owning classes. We find, for example, a class spoken of as the *possessores,* i. e., the owners of the greatest amounts of property, who gradually were able to exclude the rest of the people from all participation in the government. The *curia,* which we have seen was the aristocratic part of the original municipal organization, finally became hereditary, and all the offices of honor in the cities were filled by the election of members of the *curia,* which, through its powers of self-perpetuation, of appointing municipal officers, and of passing resolutions with regard to municipal matters, finally obtained absolute and complete control of the municipal government.

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[1] See Liebenam, op. cit., p. 452.

Constantine's administrative system. The gradual degeneration in the social organization which was characteristic of the later Roman Empire naturally had its effect upon the prosperity of the cities. The gradual accumulation of almost all property in the hands of an aristocracy, which obtained political power and used it for its own benefit and against the interests of the great masses of the people, brought it about that prosperity decreased and the population declined, notwithstanding the various legislative devices to which resort was had in order to encourage marriage and large families. Naturally the city governments lost much of their original vigor, and because of their inability to discharge the duties imposed upon them, as well as because of the centralization of social conditions generally, the central government of the Empire began to exercise greater and greater control over them. The control of the central government reached its culmination in the imperial administrative system originated by Diocletian and perfected by Constantine. In accordance with this system the civil administration of the Empire was so arranged that the entire Roman Empire, apart from Rome and Constantinople, was divided up into four districts known as Prætorian Prefectures. The prefectures were divided into districts known as dioceses and each diocese was divided into provinces. At the head of each prefecture was a Prætorian Prefect; at the head of each of the dioceses was a Vicar; in each of the provinces was an officer subordinate to the Vicar, who was known by different names in the different prefectures, but who commonly bore the title of President or Rector. These officers were all appointed by the central government. Each province was divided into districts which had different names in the different prefectures. In Italy they were called *oppida,* in the other prefectures they were usually known as *civitates.* These districts contained, as before, both urban and rural communities, between which no distinction was made. Being the undermost members of the system, they had to bear the entire burden of a very expensive administrative system. This burden was increased by the fact that by exemption from taxation Constantine favored the military class as well as the officers of the Christian church, which he had recognized. Furthermore, Constantine did not hesitate to take from the *oppida* much of the property from whose income the expenses of their administration had been defrayed in order to endow the Christian churches and corporations, and to aid in building up the new capital of Constantinople, to which he devoted so much of his energy.

The endeavor to obtain the money necessary for the imperial government had as a result that the hereditary officials in the cities, namely, the members of the *curia,* were made pecuniarily responsible for the performance of the corporate duties of the city and were forbidden by law to leave the city without the consent of the Rector, or President, of the province. For it was feared that by leaving they would escape this burden, which finally came to be regarded as intolerable.

The cities thus fell from the proud position of independence which they originally occupied, and became merely administrative districts of a larger government. They were made use of by that government in order to further the interests of the state as a whole rather than those of the cities themselves. The whole municipal organization was put into the control of a few persons, since a compact local organization and a well-defined financial responsibility facilitated the collection of the state taxes.

The bishop. This complete degeneration of municipal administration caused a series of attempts to be made in the latter part of the imperial period to reorganize the city. Space forbids us to dwell upon them and all that will be said with regard to this matter is that everywhere throughout the Roman Empire the bishop of the Christian church came, as a result of these attempts at reorganization, to occupy a position of great importance in the cities. The influence of the bishop was particularly marked both in Italy and in the older parts of Germany, which became subject in this respect to Roman influence. It was due, after the Franks came into power, first, to the grant to the bishop of judicial power over the members of his household and second, to the fact that the bishop became a feudal lord.

The city wall. The invasion of the Roman Empire by the Germans had important effects upon municipal life. In the period during which the *Pax Romana* existed urban communities were of no importance as fortified places. It was unnecessary in the peaceful conditions which existed throughout the Roman world for any particular attention to be given to the fortification of towns. The Roman system of architecture, as we find it in most of the Roman cities outside of Rome, where the enormous population combined with the topography of the district brought about exceptional conditions, shows how cities were, if some other consideration did not come into play, spread over a large area. The great extent of cities permitted the building of low one- or two-storied houses. Pompeii is a good example of such cities. We have, it is true, in Pompeii several instances of two-storied houses, but never the high buildings which were to be found in Rome itself, and which seem to be characteristic of the mediæval city.

With, however, the dissolution of the Roman Empire and the consequent decay of the *Pax Romana*, conditions of disorder became so universal that the people of the cities had to build fortifications in order to defend themselves against the ravages of robbers and the incursions of the Germans. The first indication of the necessity of such fortifications in Italian cities is noticeable in the days of the Lombards. Urban communities which were surrounded by a wall were distinguishable from the rural communities which were outside of the wall also in that part of Europe which came to be known as France, where the same conditions brought about the same results. We find the cities which continued in existence in this part of Europe during this period of disorder of very much less territorial extent than the old Roman cities in which they claimed their origin. In other cases urban districts which did not date so far back as the Roman period grew up in close connection with fortified places, so that it is said that of five hundred French cities all but eighty-four originated, for the most part, in fortified villages. In both Germany and England the presence of fortifications was an important factor in the development of municipal life. Indeed, the word borough, which is the local name in England for what we call a city, meant originally a fortified place. The existence of these fortifications had an important effect later in bringing about a congestion of population. It being impossible to fortify a district so large as that which in the days of peace had been occupied by the Roman city, it became necessary for houses to be built higher and higher. The architectural customs of mediæval Europe have thus had an important influence on modern urban life.

Distinction of urban communities. Inasmuch as the Germans who invaded and ultimately controlled the Roman Empire had a dislike for urban life, cities were not at first established by them. Indeed, the establishment of cities was not favored by the existing economic conditions. The carrying on of commerce during the disorder which followed the breaking up of the Roman Empire being extremely difficult, it was difficult, if not impossible, for a distinctly urban population to develop. The cities that still continued in existence retained their former position. They were incorporated into the ordinary administrative districts and were subjected to the rule of the ordinary administrative officers, i. e., the dukes during the period of Lombard supremacy, and later, the counts of the Franks. The physical distinction between urban and rural districts, due to the fortification of strong places, did not thus immediately cause a distinction of a political character to be made between urban and rural districts. Such a political distinction was, however, soon made. With the establishment of the feudal system, which brought about reasonable conditions of peace, commerce began again to spring up. Italy being the most highly civilized part of the European world felt the effects of the commercial revival first. Urban population began to increase both in numbers and in wealth, and this change in economic conditions soon brought about a change in political conditions. Attention has been called to the important position which the bishop occupied in the later imperial municipal system. The bishops had in many instances taken a place of political prominence in the feudal system and were for the most part residents of the urban communities where were to be found the cathedrals and great churches which were the outward evidence of the bishop's power. The first attempt of the municipal populations to obtain a greater independence from the power of the feudal officers was furthered by the bishops. In many cases in Italy the count was expelled from the city, which thereafter attached itself to the bishop. The bishop was aided in his government of the town by the richer commercial classes. To them was given in Italy the name of *popolo*. As Mr. Symonds says.[1] "Interpreting the past by the present, and importing the connotation gained by the word "People" in the revolutions of the last two centuries, students are apt to assume that the *popolo* of the Italian burghs included the whole population. In reality it was at first a class aristocracy of influential officers to whom the authority of the superseded count was transferred in commission and who held it by hereditary right." The whole subsequent history of the cities of Italy centers around the demand for the enlargement of the *popolo*. The struggles resulting from the attempt of the less wealthy classes on the one hand to gain admission to the *popolo*, as well as the resistance offered by the wealthier classes to this demand, combined with the struggles between the Emperor and the Pope, brought about conditions of great disorder in the Italian cities. The final result of the struggle was the disappearance of the bishop as a political authority and the development of an extremely despotic government. The only important exception was Venice, where the oligarchy retained and even increased its power. The despot first appears under the name of the Captain of the People. The Captain of the People became in many instances a hereditary despot. This movement began in Ferrara in 1208 and extended all through the north of Italy. In some instances the old institutions of the city remained in formal existence but were manipulated by some family of influence which controlled the city. This was the case in Florence, which was controlled by the Medici. In other cities the government was avowedly despotic. This was the case in Milan, which was controlled at first by the Viscontis and later by the Sforzas.

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[1] "Renaissance in Italy, Age of the Despots," p. 54.

Before the development of the Captain of the People, however, most of the Italian cities had established officers known as Consuls, unquestionably named after the old Roman officials, under whose rule the law merchant and probably other parts of the Roman law, which had much greater adaptability than the feudal law to the demands of the commerce then springing up, were introduced in the Italian cities. Ordeal and duel, which were important means of legal proof in the feudal law, were not suited to the legal relations arising out of commercial transactions.

A competition largely of a commercial character between the various Italian cities which had freed themselves from the political control of feudal officers, resulted in internecine wars. As a result of these wars certain cities were subjected to the control of others, so that out of the union of what were almost city-states resulted larger states, and the city in many cases again fell into the position of a subordinate member of a larger state. Cities of this character were Milan and Florence. Venice and Genoa were able to continue as city-states until quite late in the history of Europe.

German episcopal cities. A development somewhat similar to that in Italy took place in that part of Europe which has come to be called Germany. During the Roman occupation that part of modern Germany which lay west of the Rhine as well as that south of the Danube was christianized and in most of the urban communities which owed their origin to Rome, such as Cologne and Vienna, there were, at the time the Germans overran the country, bishops of the Christian church. The Franks, who ultimately came to control this region as well as Italy and Gaul, were favorably inclined to the Christian church, and granted its bishops in Germany as well as in Italy most important political privileges. Furthermore, certain urban districts, like Aix-la-Chapelle, were the residences of the Frankish kings. Wherever such a royal residence existed there were appointed officers known as Palatine officers, or officers of the palace, who, like the bishop, possessed a jurisdiction over their immediate subordinates. These exceptional jurisdictions originally existed in many urban communities along with that of the count, or other feudal officer. In accordance with the general principles of German judicial organization, the free population participated in the administration of justice through officers chosen from among them, who were known in the early Carolingian period as Scabini.[1]

At about the time of the fall of the Carolingian Empire several causes led to the development of the idea of a community life in the municipality different from the life outside. The distinctly urban communities were in Germany as in Italy and France surrounded by a wall. There was developed the idea of a city peace, in accordance with which any person living within the city walls had a claim to special protection against violence and wrong. Finally, as a result of the increasing importance which was accorded to the bishops, these formerly almost exclusively ecclesiastical officers succeeded in usurping the powers of the regular officers of the royal administration, so that most of the important cities in the older portions of Germany came to be governed by bishops occupying a well-recognized position in the feudal system. This increase in the powers of the bishops tended to emphasize the distinction between the urban walled communities governed by bishops and the rural unfortified communities remaining under the jurisdiction of the counts and other feudal officials, similar to that which we have seen was made in Italy.

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[1] The same officer is seen in the German Schöffen and the French Echevins.

Conditions of comparative peace were brought about in Germany as in Italy through the general acceptance of the feudal system, as a system of government. Commerce also began to develop. The most important routes of travel to central Europe were from the Italian cities in the north of Italy over the Alps to the Rhine and Danube and down these rivers, particularly the Rhine. The development of commerce along the Rhine resulted in a great increase in the numbers and wealth of the urban communities of the Rhine Valley. The immediate result of their increase in importance was a struggle for greater municipal independence. In this struggle the urban communities were aided by the crown, which was willing to do anything in order to curb the pretensions of the feudal nobility, among whom were included the bishops in control of the cities. The crown in pursuance of this policy granted to the urban communities many privileges and charters. Some of these privileges were merely of a commercial character, as for example, freedom from tolls, market rights, etc. In some cases they were political privileges relieving the inhabitants from the control of the bishops. One of the most important was the principle that "the air makes free." This came to be recognized as meaning that residence within the limits of a city for a year and a day relieved the person so residing from all political dependence on any feudal superior outside of the city. The effect of the recognition of this principle was to encourage migration to the cities from the rural communities, where serfdom with all its accompaniments existed.

Municipal independence in Germany. The struggle which the inhabitants of the episcopal cities entered into with the bishops still further emphasized the idea of a community of interest among the people of the city, and the citizens began to speak of themselves as *cives, urbani, burgenses, civitatenses.* Closely connected with the movement was the organization into guilds of the merchant classes who really had the power in the cities. These guilds in many cities exercised an important political influence, and soon there developed an organ which represented the people more effectively than they could be represented through the *scabini*. The body, which was thus developed, came to be known as the council, and ultimately succeeded in obtaining a general judicial power and exercised a supervision over all the work of the city to which it did not itself attend. The climax of this development was reached in the establishment of the office of Burgomaster, or master of the citizens, which, as a general thing, was developed out of the presidency of the council.

From an early time and largely owing to the missionary efforts of the German kings in the conversion of the heathen Germans on the east of the Rhine and the north of the Danube, cities had sprung up in these districts which, like the older cities, were made the seats of episcopal power. In these cities the development was similar to that in the older parts of Germany which has just been noticed. The development in these episcopal cities on both sides of the Rhine had a great influence also upon other cities which had never been the seats of bishops. The conditions in these cities were such that a development similar to that in the episcopal cities appears to have taken place without the struggles so common between the population of the episcopal cities and the bishops. In many cases cities were established in the domains of feudal lords, as for example, in Brandenburg. These lords were very desirous that cities should thus be established in order that their own power and revenue might be increased. From the very beginning they seem to have granted very large privileges to those who should undertake the founding of cities. At the time of their foundation these cities were permitted to incorporate into their organization the principles, the development of which in the case of the episcopal cities has already been noticed.

Imperial free cities. Everywhere throughout Germany in the twelfth and thirteenth centuries, which were times of great commercial expansion and prosperity, the cities, whether episcopal or not, endeavored to obtain independence from their lords ecclesiastical and secular. One of the reasons why they wished such independence was to modify the feudal law, which was, as has been said, not suited to commercial and industrial communities. The cities, therefore, attempted to obtain control of the judicial organization and secured the right to have their own local courts. These city courts developed their own ideas of commercial law, one city very often copying the law of some other city, but all being influenced by the law merchant, which had been introduced from Italy. The city of Magdeburg, for example, formulated a law which appears to have been very popular through mediæval Germany. Magdeburg aided the other cities not only by giving them a code of law, but also by acting as a court of appeal from the determinations reached by other cities in their attempts to interpret and apply the law originating in Magdeburg.

The German cities had further before them the example of the Italian cities. Like the Italian cities they strove to become republics independent of all superior power. A number of the cities succeeded in accomplishing what they desired. In fact, so successful were they that both the feudal princes and the emperor seem to have become frightened at the turn things were taking. Frederick the Second, who desired to reëstablish the Holy Roman Empire and obtain control of the kingdom of Sicily, was obliged, in order to secure the support of his vassals, to attempt to stem the tide of municipal independence. He issued several decrees, the most important of which were those issued at Worms, 1231, and Ravenna, 1232, by which the attempt was made to overthrow the independence of the municipalities.

These laws, however, were never actually enforced, and after their passage as before, the cities struggled on in the same old way. They made alliances with other cities and formed leagues like the great Hanseatic League; they received outsiders within their limits; they attempted to obtain dominion over outlying territories. Some of them succeeded in the struggle and became imperial free cities, that is, cities which recognized no feudal lord standing between them and the emperor. Other cities were unable to carry on the struggle successfully and were obliged to succumb to the forces brought against them. But while unable to secure complete independence, they nevertheless during the thirteenth and fourteenth centuries obtained many rights and privileges of self-government.

In all cities, whether imperial free cities or not, the population was divided into two classes, those having political rights, and those to whom such rights were not granted, who constituted everywhere the great majority of the city population. As a result of the development of industry, as opposed to trade or commerce, the industrial portions of the population obtained greater and greater economic power and followed the example which the mercantile portion of the community had given them in early times. They formed what came to be known as "craft-guilds," which, during the fourteenth and fifteenth centuries, practically ousted the former mercantile guilds from their position of control in the city government, and obtained that control for themselves.

The position which most of the cities in Germany had succeeded in obtaining by the end of the fifteenth century was a position which they could not logically retain. Either they must become in the full sense of the word city-states, like some of the Italian cities, or they must sink to the position of members of a larger state and must become, from the legal point of view, administrative districts of a larger state. It was, of course, impossible for many of the cities to assume the position of city-states. In fact, with the dying out of the feudal law, which gradually throughout Europe came to be replaced by the Roman law as a national state law, there was not the same need for the cities to remain independent. Roman law, which had been developed at a time when social relations were rather complex, satisfied all the needs of the commercial communities of the sixteenth and seventeenth centuries. Furthermore, the religious wars which broke out in Germany and which culminated in the terrible struggles incident to the Thirty Years War destroyed the commercial prosperity of Germany and made it impossible for the cities to maintain themselves. With the exception of a few cities, which had been recognized as free cities and which had grown so powerful that they could maintain their independence, practically all the cities of Germany were reduced to a position of subordination to the feudal princes, who during the religious wars had developed at the expense of the Emperor.

Municipal oligarchies. Another reason why no effective resistance was offered by the cities to what may be regarded as a usurpation of their rights by the feudal princes is to be found in the character of the government which the cities enjoyed. Attention has been called to the fact that all the people of the cities did not possess political rights. This condition of things was aggravated in the course of the fourteenth and fifteenth centuries. The control of the city governments fell into the hands of a smaller and smaller class who succeeded in having the principle adopted that the members of the municipal council should be chosen by coöptation, that is, when a vacancy occurred in the council it should be filled by the remaining members. This council had a very close relation with the commercial and industrial organization of the people, found in the guilds, and did not hesitate to make use of the political power which it possessed in the interest of the class which it represented. The result was that not only was the government of the cities in the control of the wealthier few, but the wealthier few did not scruple to exercise their political powers in their own interest. They prostituted their powers in the interest of a class, and wasted the city's patrimony. They were, therefore, not popular with the municipal population, and the princes of the various states which arose in Germany were able, without meeting any great resistance on the part of the city population, to assume control of the municipalities.

The result of the final development of the German cities was then the same as it was in Italy. The cities went through a period during which many of them obtained practically the position of city-states. They were for the most part, however, later brought into the position of subordinate members of a larger state.

Cities in France. What has been said of the conditions of the cities existing in the Roman Empire is just as true of the Prætorian Prefecture of Gaul as it was of Italy and Germany. The districts into which this portion of the Empire was divided and which made no distinction between urban and rural conditions, were subjected to the régime of feudalism. All the urban communities were parts of districts managed by feudal officers. The revival of commerce in the tenth and eleventh centuries had the same effects, further, in Gaul or France, as it was later called, that it had in Italy and Germany. If we examine the important trade routes by means of which this portion of Europe carried on its commerce, we shall find that in the first place commerce came from the north of Italy, either over the passes of the Western Alps, or by water, to the south of France, where important urban communities had continued in existence from the times of the Romans, or it came into the north of France from the cities of Germany, situated about the mouth of the Rhine. From either of these two districts commerce flowed into the middle of France.

Consular cities. In the south of France the Italian influence was very marked. Cities came to be endowed with consuls who were for a long time supposed to have had a Roman origin. Later investigation, however, would seem to prove that the consular cities, as these cities were called, did not get their organization from the cities of the Roman Empire, but from the Italian city-states. These cities in the south appear to have secured somewhat the same degree of independence as was secured by the Italian cities. They became in some instances really city-states.

Communes. The development in the north was very different. Here the cities, which sprang up as a result of the increase of commerce, in many instances secured their independence as the result of a distinctly revolutionary movement. The cities which were established as a result of such movement came to be known as communes. These cities took by force the right to govern themselves and obliged their feudal lords to recognize this right, and the basis of the commune was something in the nature of a conspiracy. An oath was taken by all the members of the commune to fight for its liberty. The commune movement was aided by the Crown, which as in Germany saw in the existence of strong urban communities a political force which it could set off against the feudal nobles, and therefore granted charters to the communes. These charters contained in the first place certain privileges of a private legal character, that is, they permitted cities to exempt themselves from a portion of the feudal law. In the second place, these charters often granted privileges of a political character, providing for an officer known as a Mayor, and an elective Council of Jurats, as they were called, to whom were granted judicial and administrative powers.

Feudal cities. The central portion of France could not fail to be influenced by these ideas which came from Italy either by the southern or northern route. The feudal lords in whose domains urban communities began to spring up as a result of the development of commerce, found it to their advantage to give these urban communities privileges similar to those which the city-states of the south and the north had succeeded in obtaining. In some instances we find evidence of what in more modern times would be called operations of a speculative character carried on by the feudal lords. They established town sites and laid out cities, and, in the same way as the feudal princes in Germany were at the same time doing, they granted large privileges to persons who would come and settle in these districts. These cities, however, were for the most part governed by a bailiff, or similar officer, of the feudal lord, and the privileges which they received were privileges of a private-legal, rather than a political character. This was the time when the law merchant was being revived everywhere throughout Europe, and this law was very commonly introduced into the cities throughout France. The charters which were granted by these feudal lords contained also limitations of the rights of the lord with regard to his subjects living in these urban districts.

The Crown and the cities. As the royal power increased in France, the attempt was made, however, to take away from the consular cities of the south and the communes of the north the political privileges which they possessed and to assimilate them to the feudal cities in the center of the country. Ultimately all the cities of the kingdom, however they originated, came to occupy a position similar to that obtained by the feudal cities. The movement which resulted in giving to all urban communities a position somewhat different from the rural districts, a position of a privileged character, was accompanied by the alleviation of the condition of the serfs throughout the country. Persons living in the rural communities might migrate to the cities. This alleviation of serfdom had somewhat the same effect as the recognition of the principle that "the air makes free" had in Germany.

It will be seen from what has been said that, owing to one cause or another, the idea of the city-state really never took root in France. The cities which resembled city-states and which were established in the south and north were quite early in the history of the country placed in the position of subordinate members of a larger state, a position which they have ever since occupied.

In England the city-state never developed at all. Its failure to develop was due probably to the early centralization of the royal power, and the consequent establishment of a common law not based on feudal principles, as well as to the backwardness of trade and commerce as compared with the continent.

CHAPTER V

THE CITY AS AN ADMINISTRATIVE DISTRICT OF A LARGER STATE[1]

Mediæval city not a city state. The substitution of the imperial idea for that of the Roman city-state was due in large measure to a change in social conditions, brought about by improved means of communication. Roads were built for which Rome was famous, and navigation of the seas separating the different parts of the Roman Empire was made easier largely because of the more efficient government secured through the growth of the great Roman Empire. The overthrow of the Roman Empire and the invasions and conquests of the barbarians caused at first no material change in the position of the urban communities, which for a long time remained, as they were under Constantine's administrative system, merely administrative districts of a larger state.

The revival of municipal independence, which was characteristic of all parts of Europe in the tenth and immediately succeeding centuries, also did not really cause a reversion to the ancient idea of a city-state. While there are many characteristics of the ancient city-state in the cities in Italy, Germany and France which sprang up as a result of the revival of commerce, it would be improper to regard the cities of mediæval Europe, however independent may have been their position, as really examples of the old city-state. The ancient theory of the city-state, i. e., a peculiar religious worship, did not lie at the basis of the new municipal organization. The religion of all Europe was Christian and while particular saints were regarded as according special protection to particular places the reverence in which they were held was not so great as to cause the establishment of a local religion in the sense in which each of the city-states of the ancient world had its own religion. Further, whatever the independence of the cities was, the cities never really claimed complete immunity from the power of the sovereign lord of the country, that is, the Emperor in Italy and Germany, and the King in France. Venice and Genoa, particularly Venice, might perhaps be regarded as exceptions. These cities remained for a long time independent of any other state and in Venice the peculiar veneration in which St. Mark was held was almost a substitute for a state religion. The causes of the municipal revival were, as has been said, almost entirely commercial in character. The successful prosecution of commerce and the occupations attendant upon it was impossible under the legal conditions existing in the feudal world. The cities, and by the cities we really mean the commercial communities, struggled not so much for any abstract idea of political liberty or independence, as for the opportunity to carry on under favorable conditions the occupations upon which the existence of municipal life was absolutely dependent. The great influence which the cities had in bringing about modern conceptions of law —for the Roman law originally introduced into the cities ultimately became the law of almost all of Europe—has caused many to believe that the cities are to be regarded as in the nature of cradles of liberty, and that municipal populations are more prone to struggle for the realization of abstract principles of liberty than are rural populations. If, however, the interpretation of the history of mediæval municipal development which has been made is correct, it would appear that the municipal populations were struggling during the middle ages merely for a better opportunity for the transaction of the business upon which municipal life was dependent

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[1] Authorities. The same as for the preceding chapter; Vine, "History of English Municipal Institutions"; Merewether and Stephens, "History of Municipal Boroughs"; Munro, "The Government of European Municipalities," chap. 3; Orlando, "Primo Trattato Completo di Diritto Amministrativo Italiano," Vol. I; Pertile, "Storia del Diritto Italiano," Vol. II.

After the cities had secured the changes in the law and in the political system which were necessary in order that the occupations of trade and commerce could be successfully carried on we find that they declined in political importance. The abstract idea of municipal independence, apart from the consideration of the economic advantages which such independence in the conditions of the time gave them, does not appear to have had very much force upon their actions.

City oligarchies. That cities may not properly be regarded as cradles of liberty is seen when we consider their internal domestic history. For what was true of the Roman urban communities, namely, that they fell under the control of a small class which made use of its power over the city government in its own interests, was just as true of the cities of the middle ages. In Italy the oligarchical rule which was at first characteristic of the newly revived municipalities gave place generally to despotic rule. In Germany the government was rather oligarchical than despotic in character and was carried on by a narrow group of citizens who were usually closely associated as merchants or manufacturers with the commerce and industry of the city, and who made use of their powers to secure to themselves what were very much in the nature of commercial and industrial monopolies.

The English borough. This tendency of urban populations to fall under the control of an oligarchy was perhaps most marked in England. The original English municipal organization was an unusually democratic one. We find its center in a special court, which cities, after the manner of all European cities in the middle ages, were permitted to hold, called the court-leet. In accordance with the system of administration of justice by the people, which was characteristic of the original Teutonic legal system, this body consisted of the freemen householders, who, in the language of the time, "paid scot and bore lot." By this was meant the paying of taxes and the legal capacity of participating in the judicial administration. As the cities developed, this body, which was originally judicial in character and which did for the city justice what the ordinary courts of the hundred did for the rural districts, assumed the discharge of the municipal functions which were necessitated by the presence in the city of a large population.

Gradually, however, this democratic organization was modified, owing to changes in the general administrative system of the country. One of the things which characterized the original English municipal borough was the privilege known as the *firma* *burgi*. This consisted in the right granted to a city to compound for a fixed sum the pecuniary burdens which might be demanded by the Crown of the municipal inhabitants. It was in the early days the result of a bargain between the Crown and the city, which was represented by its court-leet. After the amount which was to be given to the Crown was ascertained, it was distributed among the people of the city by the court-leet. When, however, Edward I, in 1295, summoned to meet with the Great Council of the kingdom, two representatives from each of the boroughs, and two knights from each of the shires, and thus formed the body afterwards known as the English Parliament, the function of the court-leet in fixing the amount due the Crown ceased to be of any importance. Such bargain as was thereafter made between the Crown and the city was made in Parliament, in which the borough was represented, and the amounts that were to be paid by the city inhabitants were determined by that body, rather than by the local court-leet, and took on the nature of a tax.

At the same time that the financial functions of the old municipal assembly were being taken from it, the judicial privilege, which it possessed, consisting in the administration of the law in a special municipal court-leet, was succumbing to similar centralizing influences. The law itself was becoming much more complex with the greater complexity of social conditions, and this complexity of the law made it seem expedient to provide for judges learned in the law to apply it in place of the old popular courts. At the same time, a new method of preserving the peace was established. This obtained its final form in the reign of Edward III, when the office so celebrated afterwards in English history, namely, that of the justice of the peace, was established. Justices of the peace were provided for the cities as well as for the open country, and in the cities as well as in the open country, they assumed the discharge of almost all police and minor judicial functions. As a result of the establishment of judges learned in the law, and justices of the peace, the old court-leet ceased to have any particular importance as a judicial body, and although apparently it was never abolished by formal act of Parliament, it seems to have died of inanition.

Development of oligarchical government. The apparent result of the decreasing importance of the court-leet was that it came to be attended by fewer and fewer persons. The only part of the work which it formerly did that it had still to do was attending to the distinctly local matters of an administrative character. This work could be done more easily by a committee of the body than by the whole body, and we find developing everywhere in English cities a small body known in some places as the Leet-Jury, in others as the Capital-Burgesses, and in still others as the Borough Council, which, ultimately, came to be the principal municipal authority. The old basis of municipal citizenship, which consisted in paying scot and bearing lot, began to be undermined, and was replaced by different principles in different cities, principles which varied with the occupations and interests of the municipal inhabitants. In the larger cities, like London, in which the interests of commerce and industry predominated, membership in guilds became the basis of municipal citizenship. London to-day, with its livery companies, as they are called, is a good example of the organization of the mediæval English city.

The assumption of political power in the English cities by a narrow class of the municipal population was naturally not accomplished without opposition upon the part of the inhabitants who were excluded from participation in the government. Thus, it is said that in 1467 "the companies and liveries of London had been making encroachments upon the privileges of householders in the ward motes to such an extent that it was necessary for Parliament to interfere for the protection of the people, and upon the Parliamentary roll of the same year there is a petition praying for the dissolution of the tailors' guild at Exeter, on the ground that they set the authority of the mayor at defiance and threatened to reduce the town to a state of anarchy."[1] Notwithstanding this opposition, the result was the same as that which we have noticed in Germany, namely, that the citizens as a whole lost all right to participate in the city government, and that a new body which represented the wealthier classes took to itself the powers which formerly were exercised by the more democratic court-leet. This narrow body, by whatever name it was called, was either renewed by coöptation, or chosen by a very narrow electorate composed of the more wealthy members of the community.

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[1] Vine, "English Municipal Institutions," p. 7.

Incorporation of boroughs. The next step in the development was the putting the seal of legality upon this oligarchical municipal organization. This was accomplished through the device of incorporating cities. The early charters possessed by cities were not in reality charters of incorporation, but like the charters granted to the German and French cities, were merely charters of privileges. The first charter of incorporation was granted in 1439 to the borough of Kingston-upon-Hull. With the accession of the Tudors, the movement for incorporating boroughs assumed such proportions as to justify us in placing the beginning of the period of incorporation at the accession of the Tudors to the throne of England.

These charters incorporated, not the whole body of citizens, but the narrow oligarchy which had come to take its place. The legal name which the City of New York bore up to the time of the establishment of the present city, i. e., Greater New York, which was "The Mayor, Aldermen and Commonalty of New York," was given to it in one of the early charters framed upon the English models.

Action of Crown. The incorporation of boroughs was favored by the Crown because by placing the control of the boroughs in the hands of a few persons the Crown could exercise a greater influence. That the Crown should have this influence was important, because of its desire to control Parliament, many of whose members were elected by the boroughs. This desire to control Parliament was due to the religious struggles which occurred as a result of the Protestant Reformation in the sixteenth century. Indeed, the importance of controlling Parliament was so great that the king granted charters of incorporation carrying with them the right to be represented in Parliament to an enormous number of boroughs, so that, ultimately, the urban population were disproportionately represented in Parliament.[1]

Even the grant of charters of incorporation was not sufficient to satisfy the wishes of the Crown; and the courts, which were at this time under royal control, invented what is known as the principle of implied incorporation. This principle was made use of to force upon boroughs, which would not accept the charters offered them by the Crown, the oligarchical form of government which we have seen had so generally developed, and its application gave binding effect to customs in accordance with which select bodies had exercised powers in the various municipal boroughs.[2]

The most noted example of action on the part of the Crown in the establishment of oligarchical government in the boroughs is to be found in what is known as the "crusade against corporations," which took place under Charles II and James II, particularly under the latter. James was aided in his work by his tool, the notorious Lord Jeffreys. Actions of *quo warranto* were brought in great numbers against such municipalities as had evidenced any desire to be independent.[3] Judgment was given by the courts against many of the corporations, among them the city of London. Other corporations voluntarily surrendered their charters for fear of being proceeded against by the Crown, and in case judgment was obtained against a corporation, or a corporation surrendered its charter, a new charter was granted placing the control of city affairs in the hands of the wealthy few.

After the Revolution of 1688, conditions were no better, because of the fact that it was to the interest of the political parties, which very soon developed, to maintain the existence of the "rotten boroughs," as they were called, through which the parties might swell the number of their adherents in Parliament.

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[1] It is said that notwithstanding the various redistribution acts which have been passed within the last two centuries this disproportion still exists.

[2] Corporation Cases, 4 Reports, p. 776; Ireland and Free Borough, 12 Coke 120.

[3] The most famous of these cases was that of Rex v. London, 8 Howell's State Trials, pp. 1039–1340.

English cities in 1830. The position of English municipal government as it existed in the early part of the nineteenth century is well described by Vine. He says: "That the municipal corporations were for the most part in the hands of narrow and self-elected cliques who administered local affairs for their own advantage, rather than for that of the borough; that the inhabitants were practically deprived of all power of local self-government, and were ruled by those whom they had not chosen, and in whom they had no confidence; that the corporate funds were wasted; that the interests and improvements of towns were not cared for; that the local courts were too often corrupted by party influence and failed to render impartial justice, and that municipal institutions, instead of strengthening and supporting the political framework of the country, were a source of weakness and a fertile cause of discontent."[1]

The whole municipal organization was thus prostituted in the interest of the party politics of the kingdom generally. It was so poor and so unrepresentative that it was useless to give the city corporations any of the new functions of administration, the adoption of which was necessitated by the changes that were taking place in English social and economic conditions. When the suppression of the monasteries by Henry VIII had made necessary some provision for the poor, this branch of administration had been entrusted to the ecclesiastical parishes, which existed in the urban as well as in the rural districts. These parishes, which acted under the supervision of the justices of the peace, had more vitality than the boroughs in which they might be found, and were, therefore, in many cases, entrusted with the new functions of government. In other cases such new functions of government, among which may be included the lighting and paving of the streets, were put into the hands of trusts and commissions formed by special legislation. The sphere of government which the borough corporation, as a corporation, had to discharge was therefore very small. It embraced only such matters as the care of municipal property, the issue of police ordinances, and the discharge of certain functions

[1] "English Municipal Institutions," p. 10.

connected with the administration of justice. For all English cities possessed judicial powers as the result of the fact that a special commission of the peace was issued to them. The justices of the peace in the cities were often the same persons who in other capacities acted as municipal officers. The borough was not looked upon as a local organization for the performance of all governmental functions within the municipal area, but as on the one hand a juristic person with property of its own, to be made use of for the benefit of those entitled to it, who were not many in number, and on the other hand, as a mere delegate of the state government for which it acted in matters, like the administration of justice, of state rather than local concern.

Such, then, were the conditions in the urban communities in almost all parts of western Europe at the end of the eighteenth century. The cities which had fallen into the control of an oligarchy were practically incapable of decent municipal government, and the result was that either they discharged very few functions of government, which were preferably assigned to other authorities, as in England, or else, where they did act they were, as in France and Germany, subjected to the most far-reaching central state control.

French centralization. Owing to the fact, perhaps, that France became thoroughly centralized before any other state in Europe, the movement towards subjecting municipalities to the state began in France earlier than elsewhere. Here it may be said to have begun as early as the fourteenth century. The most noted early instance of the subjection of cities to central control was the interference by Charles VI with the administration of the city of Paris, in 1383. Central control of cities was not important in France, however, until the beginning of the sixteenth century. The attempt was then made by the Crown to issue general ordinances which should apply to more than one city. Up to this time it may be said that the government of the cities, so far as their relations with the Crown were concerned, was regulated by ordinances of a special and individual character. While under the régime of special charters the relations between the cities and the Crown were regarded as being governed by something in the nature of a contract, under the régime of general ordinances the contract idea was abandoned, and cities were regarded as subject to the general legislative power of the Crown. The Crown was not considered, in its regulation of city affairs, as dealing with another party to a contract on a position of equality with it, but as regulating the relations of subordinate communities through the exercise of sovereign power.

The purpose of these general ordinances was to increase the influence of the Crown as the representative of the new national state which was beginning to be developed. It had for its ultimate effect to take away from the cities practically all powers of local self-government. This was accomplished under the reigns of Louis XIV and XV, so that by the beginning of the eighteenth century the cities were merely administrative districts of the kingdom with privileges hardly any greater than were possessed by other administrative districts.

The Crown had in many cases ample excuse for interfering. As early as 1464, we find an instance of a bankrupt city, viz., Montreuil sur Mer. The Crown had to appoint commissioners to liquidate its indebtedness and one of the means to which the commissioners had recourse was the means which has been attempted to be applied by some American cities in the nineteenth century, namely, the scaling of the city debt. Numerous instances of such municipal extravagance might be cited. Indeed, municipal extravagance became so serious that Colbert, the great finance minister of Louis XIV, undertook a general investigation of the debts of the cities in several of the French provinces. The report of the commissioners appointed for the purpose was followed by an ordinance in 1662, which made the authorization of the Crown necessary for contracting any new debts. In 1669, all the cities were ordered to send to the royal officers in the provinces their budgets of receipts and expenses for the last ten years, and in 1683, the Crown, in order to prevent them from becoming indebted in the future, ordered that their budgets of expenses should be fixed in advance by the royal officers.

Legislation of Napoleon. The subjection of cities to the control of the central government reached its climax in the Napoleonic scheme of administration which was incorporated into the great administrative act of 1800.[1] This act is interesting for several reasons. In the first place, it established in its final form the administrative district known to the French law as the commune. The term "commune" was adopted because it was associated in the minds of the French with the struggles for municipal liberty, which occurred in the northern part of France during the middle ages, and which, as we have seen, resulted in the establishment of little republics in the nature of city-states. The law is interesting in the second place, because the commune which it established reverted to the old Roman idea of the city-state in that it made no distinction between the urban and the rural portions of the community, the commune consisting of a territorial area in which both urban and rural communities are to be found, and being governed from the most important urban district in the commune, to which was given the name of *chef-lieu.* Finally, the act of 1800 is of interest, as has been intimated, in that it shows the extreme point to which the movement of subjecting the cities to the control of the state went in the highly centralized government of France. The organization provided by this act for the commune consisted of a council and mayor, who were appointed by the central government of France, and all of whose acts were subject, before they had legal force, to the approval of some officer of the central administration.

Centralization in Germany. In Germany, the development was much the same as in France. The action which the monarchs of the various states of the Empire took towards the cities was during the seventeenth and eighteenth centuries in the nature of the exercise of sovereign power. The contractual basis of the city was abandoned and everywhere municipal administration began to be regulated by general ordinances more in the nature of legislative acts than in that of contracts. The conception of the city which is to be found in these ordinances is not that of a local self-governing body, but of a state agent which is made use of, not so much for the satisfaction of the local needs of the inhabitants of the district in which the city is situated as to aid the state government in a better regulation of state affairs, which now included what had been regarded as city affairs. The rights and powers possessed by cities were therefore regarded as having been delegated to them by the general state government. The officers in the cities were regarded as part of the state government placed by it in the cities, or where the right of electing city officers was still retained by the municipal population their election was made subject to the approval, and the officers, when elected, acted under the supervision, of the central state authority.

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[1] L. 28 pluviôse an VIII.

In the second place, the rights of the cities as legal corporations, and the private legal rights of the single members of these corporations were regulated by state law, while any resolutions passed by the cities as a result of the exercise of any powers, that might have been left with them to regulate their internal police, had force only after they had been approved by representatives of the central state government. The property of the cities, finally, came to be regarded as state property simply held by the cities in trust, and its management was subjected to the continual control and supervision of the state government.

This condition of things was brought about in Prussia, largely by the Great Elector and Frederick William I, and the legal conception of the conditions which they established was incorporated into the Prussian code that was adopted in the reign of Frederick the Great.

It has already been shown that, on account of the gradual degeneration of German municipal administration, which had fallen into the hands of a small and selfish class, little effective resistance to this state interference was made by the cities. As a matter of fact, indeed, the work which the Crown thus undertook was done in such a way as really to benefit the average municipal inhabitant. The town property and police power, which had been made use of by the municipal oligarchies as a means of enriching themselves and the class to which they belonged, were restored by the Crown to the position which they formerly occupied as a means of benefiting the entire municipal population. The Crown, thus, while reducing the cities to the position of absolutely dependent members of the state organization, laid the social basis upon which a reasonably democratic municipal government might be built up in the future. As Leidig says: "The service which the absolute government that arose at the end of the Thirty Years War rendered to municipal government is that it put the cities in a position to serve public needs, and, while it had no conception of a municipal life apart from the life of the state, it did exercise the powers of the cities for public ends, and in this way revived the old municipal spirit for the work of the future."[1]

Centralization in Italy. Attention has been called to the fact that the cities of Italy, after the development of despotic government therein in the fourteenth and fifteenth centuries, in many cases dropped into the position of members of a larger state. This movement was furthered by the subjection of most of Italy to the influence of foreign states. Thus, Spain ultimately obtained control of the southern part of Italy, which was organized under the name of the Kingdom of the Two Sicilies. In the north of Italy by the eighteenth century, most of the states which had developed had fallen under the control of Austria, while the center of Italy was occupied by the Papal States. In all of these districts the cities ultimately lost almost all independence. In particular instances, they had certain privileges of a private legal, rather than a political character. These privileges did not ordinarily include the right of local self-government, but rather security of property rights and the civil liberty of the citizens, together with a limitation of their duties to the state. In exceptional instances, however, the inhabitants of cities did have the right to choose their own officers.[2] The final result of the encroachments of the central government of the state was, in some of the Italian states, to reduce the cities to the position of purely administrative districts. Such was the case in Piedmont, whose king ultimately consolidated Italy. Charles Emmanuel III, king of Piedmont, in a series of regulations, which were consolidated in 1775, and remained in force until 1848, provided a uniform administration for all communes. The officers of the communes were appointed directly or indirectly by the central government.[1]

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[1] "Das Preussische Stadtrecht," p. 9.

[2] Pertile, "Storia del Diritto Italiano," Vol. II, pp. 370–400.

In England, no such subjection of municipal government to the control of the Crown is to be noticed. This apparent exception to the general rule is, however, more apparent than real. The system of government possessed by England was, after the development of Parliament, a system of legislative centralization, while that on the continent prior to 1848 was a system of administrative centralization. In accordance with the English principles of legislative, or Parliamentary, centralization, the cities were regarded as subject in all cases to the power of Parliament, and as having only those powers which Parliament had expressly or impliedly granted to them. As compared with continental cities their sphere of activity was a very narrow one. It is true that in this sphere they acted free from any central administrative supervision, but all things considered it was as true in England as on the continent that the city of the latter part of the eighteenth century was a subordinate member of a greater state of which it formed a part.

The cities and the state. The ease with which cities were subjected to the control of the state was due in the first place to the fact that what at one time had been of merely local interest had become of general state interest, owing to a widening of social and economic interests, and to the adoption of a general state law which regulated these interests. What was true of the law was true of the other matters whose regulation by the cities was necessary if the commercial classes were to have the opportunities for action which they desired. Like the law merchant, these matters afterwards were regulated by the national state, which bore in mind the interests of the commercial classes now become of great importance to the state, and exercising great influence over its policy. The reasons for political independence on the part of the cities having ceased, the cities made little serious resistance to the attempt upon the part of the states to subject them to their power. We may say, indeed, that the cities ceased to have an excuse to exist as separate and independent communities after the widening of social and economic interests which made possible the national state, and from that time cities everywhere throughout Europe became a part of the new system of political organization which was thus developed.

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[1] Orlando, "Primo Trattato Completo di Diritto Amministrativo Italiano," Vol. 1, pp. 1109, et seq.

The oligarchical government which cities everywhere seem to have developed was undoubtedly another reason why no serious resistance to subjection to state power was made. This government was everywhere accompanied by the exploitation of the many by the few. The cradles of liberty, as cities have often been called, had become engines of oppression whose preservation could not be expected to arouse enthusiasm on the part of the oppressed.

Cities had thus become incapable of discharging satisfactorily the functions which they had formerly discharged and the new governments which arose through the formation of the national states, and which showed much more vitality and vigor than the anachronistic and degenerate city governments naturally assumed control of the cities.

CHAPTER VI

THE CITY AS AN ORGAN FOR THE SATISFACTION OF LOCAL NEEDS[1]

The modern municipal problem. As we have seen, the improvement in the means of communication and the industrial revolution which were characteristic of the later years of the eighteenth century and the early part of the nineteenth century had for their effect all through Europe and the United States to mass great populations in cities. A result of this great increase in urban population was to bring into prominence problems which the mediæval city had not really seriously attempted to solve, but which the cities of the nineteenth century had to solve if they were to secure even reasonably sanitary conditions. We find, therefore, in the legislation relative to cities adopted in the nineteenth century an attempt to give the cities both a wider sphere of local activity and an organization suitable to the discharge of the new functions of government which the occupation of this sphere necessitated.

European municipal legislation. The first important piece of European legislation which recognized that the city, in addition to being an agent of state government, was an organization for the satisfaction of local needs, was the Prussian Cities Act of 1808. This act recognized that each city had a sphere of activity and property apart from the state and gave to the city an organization which has remained in its outlines and characteristic features to the present day. This organization was so formed as to permit of voluntary action upon the part of the city in the direction of satisfying its own local needs.

The Prussian Act of 1808 was followed in England by the Municipal Corporations Act of 1835, which gave to the English municipal borough a position and organization very similar to those which had been devised in Prussia for the Prussian municipal corporation.

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[1] Authorities: Same as preceding chapter. Fairlie, "Essays in Municipal Administration"; Deming, "Government of American Cities"; Munro, "The Government of European Cities."

France followed the lead given by Prussia and England and, by a series of laws beginning in 1830 and ending in the existing law of 1884, gave to her cities both an organization and powers of local self-government which permit the cities to attend to the distinctly local needs of modern urban life.

The kingdom of Sardinia, which later developed into the present kingdom of Italy, provided, under the influence of the revolutionary ideas of the year 1848, for her cities, local councils elected by the larger taxpayers. The electorate was enlarged in 1859. The movement toward according to the cities of Italy greater liberty continued uninterruptedly and, after the union of Italy in 1870, new laws were passed, namely, the present law of 1889 as to the general powers of cities, and a law of 1903 as to the operation by the cities of public utilities, which greatly enlarged the powers of local government possessed by the cities, and recognized that they were not merely agents of the central government, but as well organizations for the satisfaction of local needs.

Early American city charters. The municipal institutions of the United States were naturally borrowed from those in England as they existed prior to the adoption of the Municipal Corporations Act of 1835. The first important municipal charter was granted to New York, which after several attempts to obtain a charter, received from George II in 1686 what is known as the Dongan charter. During the colonial period as many as seventeen charters of a similar character were granted to various districts, almost all of them outside of New England, where the town system of government gave to the urban districts a satisfactory system of government.[1] These early colonial charters, like the early European charters, were regarded as in the nature of contracts entered into between the people of the cities and the Crown, represented by the colonial government.

[1] Fairlie, "Essays in Municipal Administration," p. 48.

After the United States secured its independence charters of municipal incorporation were granted by the legislatures of the states and up to about the middle of the nineteenth century were contained in special acts, each of which affected only one city. These charters, both colonial and state, were in large measure based upon the mediæval idea that a special organization of the judicial system in the municipalities was necessary.[1] In fact, the sphere of government recognized by these charters as possessed by the cities, embraced merely the right to exercise judicial powers through the special courts that were established, the right to issue police regulations, and the right to manage the property with which the cities were endowed by the charter, as in the case of New York, or which was obtained in any other way. The cities were not recognized as possessing in the absence of legislative authorization any power to tax their inhabitants and were restricted, so far as income was concerned, to the fines that might be imposed in their courts and to the revenue of their property. They generally, however, possessed the borrowing power and when their debts became so great as to cause anxiety they resorted to various expedients, such as lotteries, in order to pay these debts.

Special legislation. The narrowness of their powers and the necessity of increasing the sphere of municipal activity, owing to the development of new city needs, made necessary continual applications for new powers to the legislatures. But in the early history of municipal government in the United States legislative action with regard to cities was ordinarily taken only upon their application. It is said that in the State of New York it was "the almost invariable course of procedure for the legislature not to interfere in the internal affairs of a corporation without its consent."[2] About the year 1850, however, the legislatures of the various states began to pass special laws applicable to particular cities without obtaining the consent of the cities concerned, thus abandoning the idea that charters were to be regarded as contracts. In this view the legislatures were sustained by the courts, which held that acts regulating city government were ordinary acts of legislation susceptible of amendment by the legislature at any time without the concurrence of any other authority.

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[1] See *infra*, p. 238.

[2] Mayor v. Ordrenan, 12 Johnson, N. Y. 125.

Constitutional prohibitions. The action of the legislature in thus regulating city matters led to so many abuses that in a number of states provisions were inserted in the state constitutions prohibiting the legislature from enacting special laws affecting cities. In very few of the states were these constitutional provisions attended with great success in preventing really special legislation. The courts of most of the states recognized that notwithstanding the existence of such constitutional provisions it was perfectly proper for the legislature to classify cities. In some instances, of which the State of Ohio was a marked example, the legislature took advantage of the attitude of the courts to classify cities so minutely that its acts while general in form were just as special in their application as before the passage of the constitutional provisions. The abuses which resulted from this action on the part of the legislature led the supreme court of Ohio to reverse its former decisions, and at the present time the legislature of that state is no longer authorized to classify cities, but must provide in a general municipal corporations act a scheme of organization sufficiently general in character to permit of adaptation to the needs of the particular cities by local action on their part.

One of the reasons why constitutional provisions requiring general municipal corporations acts have not been as satisfactory as was expected, and why, on that account, the legislatures, even after the constitutional prohibition of special acts affecting cities, still continued to pass what were in reality special acts, is to be found in the detailed organization and powers conferred upon cities by the legislatures in acts purporting to be general in character. The legislature had fallen into the habit of regulating the organization and powers of cities in detail prior to the adoption of the constitutional provisions alluded to, and the mere adoption of such provisions did not have the immediate effect of causing any change in legislative habits. The need of special action in the case of particular cities was as great after the adoption of these constitutional provisions as before, and the legislature was forced to take such special action, which, as has been said, was upheld by the courts. In some states, however, the legislature acted differently. In Illinois, for example, the first general municipal corporations act passed by the legislature, namely, the act of 1872, did not attempt to regulate in detail the municipal organization, but on the contrary confined itself to very general provisions as regards both the organization and the powers of cities. As a result, we find that the constitutional prohibition of special legislation had a different effect in that state from what it at first had in the State of Ohio. Special legislation with regard to cities practically ceased.

The lack of success which has commonly attended the adoption of constitutional provisions attempting absolutely to prohibit special legislation as to cities, led the State of New York to attempt to solve the problem in another way when it came to adopt its present constitution in 1894. The constitution then adopted does not absolutely prohibit special legislation, but divides the cities of the state into three classes according to their population, and requires that a special act, which is defined in the constitution as an act affecting less than all of the cities of one class, shall, before it becomes law, be submitted to the authorities of the city or cities concerned. The municipal authorities have the right to disapprove it after holding a public hearing, notice of which is to be given in the newspapers. If the local authorities make use of their power to disapprove the act, the act is again to be submitted to the legislature of the state, which has the right to pass it by an ordinary majority over the veto of the local authorities. The act is then to be submitted to the governor of the state in the same way as other acts. It is difficult to arrive at a determination as to the effect of this constitutional provision. It would seem, however, that the formalities and publicity required for the passage of special legislation with regard to cities have had the effect of preventing the enactment of the most objectionable classes of special laws. This is particularly true of the many bills affecting special cities which come up before the legislature in the last days of the session. As the local authorities have the right to withhold their approval fifteen days, it is possible for them, by delaying their action somewhat, in case they wish to disapprove a bill, to return it so late as to make it impossible for the legislature to repass the bill over the local veto. It is, however, true that this method of making special legislation more difficult does not prevent the passage of special acts which have become party measures. Thus, the present charter of New York was adopted by the legislature after it had been vetoed by the local authorities of at least one, and that the most important, of the consolidated cities.

Appointment of city officers. The interference of the legislature in city matters was not, however, confined to the passage of special legislation. In a number of instances occurring about the middle of the nineteenth century the attempt was made to provide for the state appointment of officers who had been theretofore regarded as municipal in character. Thus, in a number of states provision was made by law for the state appointment of police commissioners, fire commissioners, and other officers who were to have jurisdiction over either some particular city, or a district which embraced the territory of several adjoining municipal corporations.

The fear upon the part of the people that in this way they would be deprived of what they regarded as their right to local self-government had led to the insertion in a number of constitutions of provisions which secured to the cities the right of locally selecting city officers. These provisions were worded, however, in such a manner as to forbid the legislature merely to provide for the central appointment of "city officers." When the courts came to determine what were "city officers" they took a rather narrow view of the matter and held in a number of cases that most all of the officers who were engaged in work in a city and who had been popularly regarded as city officers were state rather than city officers and were not affected by these constitutional provisions. Indeed, it may be said generally that only those officers in the city government are city officers in the sense of the state constitution, who have to do with the streets and public works generally of the city. Police officers, health officers, and officers dealing with the school system are almost universally regarded as discharging functions of interest to the state government and as therefore not local in character.[1]

Furthermore, the courts have recognized in several cases that all of the provisions which have been inserted in the constitution with the idea of protecting municipalities against the interference of the legislature are to be construed strictly and as affecting only those corporations which may be mentioned in the provisions. Thus, the courts have held that, even under constitutional provisions prohibiting special legislation with regard to cities or providing for the local selection of corporate officers, the legislature has the right to organize new corporations with a different territorial basis and with special administrative functions, such as police districts and drainage districts, and that, in case it does so, the provisions of the constitution, to which allusion has been made, do not have the effect of limiting the power of the legislature with regard to such newly created corporations.

City-made charters. Finally, the attempt has been made to give to the municipal corporations generally, or certain classes of municipal corporations, the power to frame their own charters of government, which shall after their adoption not be subject to amendment by the legislature of the state through the passage of either general or special legislation. This method of limiting the power of the legislature over cities was adopted in the Missouri constitution of 1875. It has been since incorporated in a modified form into the constitutions of California, Oregon, Washington, Minnesota, Colorado, Oklahoma and Michigan. Probably this is the most effective method of protecting cities against legislative interference. In their interpretation of these constitutional provisions the courts have, however, taken an attitude similar to that which they have taken with regard to the other constitutional provisions noticed above. That is, the courts hold that the privilege of framing its own charter of local government does not affect the functions of government which, while discharged in the city, interest the state as a whole. A provision of this sort does not, therefore, prevent the state from interfering with the police force or the educational system of cities, since these branches of administration are regarded as state rather than local in character.

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[1] In New York, however, the courts take a different view of the effect of such a constitutional provision, and have held that police officers are city officers under the constitutional provision providing that city officers shall be elected by the people of the city, or appointed by the authorities thereof in such manner as the legislature may direct.

Position of American city. It will be noticed from what has been said with regard to municipal development in the United States that a position has been assigned to the American city quite different, from a constitutional point of view, from that which has been assigned to the city in any of the other countries which have been noticed. In all other countries, probably because of the fact that written constitutions limiting the power of the legislature do not exist, the city is not by law protected in any way against the action of the legislature. The only protection against central interference which is accorded to it by the law is against arbitrary interference by the administrative officers of the central state government. Under such a system it is of course true that cities may conceivably be accorded very large freedom of action. This, however, is the result rather of legislative policy than of constitutional law. As a matter of fact, legislative policy throughout continental Europe does accord to the city large freedom of action, as will be shown later. In England, also, the sphere of activity of cities is quite large. The grants of power to the cities by Parliament have been quite general in character and cover a wide field. In the United States, although cities are, as has been shown, in many instances protected by constitutional provision against the interference of even the state legislature, they do not as a matter of fact have so wide a field of action as European cities because their powers are enumerated and their organization is fixed in considerably more detail in the law of the state than is the case either on the continent or in England.

Municipal functions. The legislation of the nineteenth century enlarging the powers of cities did not, however, reverse the verdict which had been reached at the end of the eighteenth century. The city had been tried and found wanting in capacity to discharge a whole series of administrative functions, which had therefore been assumed by the state. The discharge of these functions was thereafter to remain with the state. What these functions are can be stated perhaps most easily if we treat the matter from the point of view of the accepted classification of administrative functions in general. These are usually classified under five heads, viz., foreign affairs, military affairs, judicial affairs, financial affairs and internal affairs.

Foreign affairs. When the city lost its independent position as a city-state, it lost the right to discharge any function relative to foreign affairs. In the mediæval days of municipal independence the cities had in many cases, as we have seen, entered into foreign relations. They thus formed leagues with other cities of which the Hansa is a marked example.[1]

Military affairs. What has been said with regard to the position of the city as to foreign affairs may be repeated as to military affairs. In former days the cities had important military duties to perform. Many of them, indeed, had their own armies, or trained bands as they were sometimes called.[2] It is, of course, true that even now in countries like the states of the United States, in which there exists a citizen soldiery, cities or city officers may have assigned to them by the state the establishment, maintenance and care of armories, and the partial support of a military establishment, but the soldiers for which such provision is made are regarded as state and not city troops, are under the command of officers who receive their commissions from the state and not the city government, and are governed by the military law of the state and not of the city. Duties relative to military affairs are imposed upon the cities in certain cases, not because military affairs are regarded as a municipal function, but in order to provide a convenient method of defraying a part of the expenses of the state government.

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[1] Prof. Ashley says of the English cities, "Economic History," Part II, p. 94, cited in Wilcox, "The Study of City Government," p. 76: "Before the close of the Middle Ages England was covered with a network of intermunicipal agreements to exempt the burghers of the contracting towns from tolls when they came to trade; and these unquestionably led the way to more complete freedom. They are indeed almost the exact parallels, in that stage of economic development, to the international treaties of reciprocity by the aid of which many modern politicians expect to reach universal free trade. They began as early as the thirteenth century; Winchester and Southampton entered into such a contract in 1265, and Salisbury and Southampton in 1330, and they became more frequent as time went on."

[2] As Dr. Wilcox says, "The Study of City Government," p. 25, "The feudal cities as well as the ancient city states often had their own armies and were not slow to use them against each other. Soldiers of the city of London played an important rôle in the early internal and other wars of England." Dr. Wilcox quotes (p. 77) Mrs. J. R. Green as saying, "The inhabitants defended their own territory, built and maintained their walls and towers, armed their own soldiers, trained them for service and held reviews of their forces at appointed times."

Judicial affairs. What has been said with regard to military affairs may with some modifications be repeated with regard to judicial affairs. The cities in former days had almost universally important judicial functions to discharge. Indeed, the origin of the modern municipal organization, it has been shown, is to be found in the judicial organization. But in almost all modern states the administration of justice has come to be regarded as a function of the state and not of the municipal government. It is of course true that quite commonly in the United States local judicial officers exercising minor, or even as in New York, higher civil and criminal jurisdiction, are appointed by the city authorities or elected by the people of the city. Wherever a special judicial organization, which provides for the local selection of judges, has thus been established in the cities it must be said that in such cases the city has been assigned a share in the administration of justice. This is so notwithstanding the fact that the decisions of these local courts may be subjected to the supervisory control of the state courts. For the arrangements which are made in cities relative to the administration of justice have an important influence on its government, particularly where the judicial control over municipal action is strong. Under the conditions to which reference has been made this control gets to have the nature of a self control. What is true of the administration of justice generally is also true of that part of it which affects solely the prosecution of crime. In such conditions as exist in the four counties which form the City of New York, where the American practice of electing the public prosecutor is adopted, it must be admitted that the prosecution of crime also is really a municipal function. Finally, provision may be made, as in the case of the administration of military affairs, for the payment by the city of all or of part of the expenses of the administration of justice. This is the general rule in the United States.

In all of these cases, however, the city is acting as an agent of the state government in the discharge of a function of government which is now recognized almost universally as belonging of right to the state, but which the state has delegated to the city, either because it is more convenient for the city than for the state itself to assume the discharge of this function, or out of regard to historical tradition. If, however, the city is protected by the constitution of the state in its right to select judicial officers, the right of the government of the state to assume judicial powers is by so much limited.

Financial affairs. The city may in like manner be treated as an agent of the state in the branch of administration which has been called financial affairs. It may, as has been shown, be made the agent for the payment of the expenses of functions of state government. It may also be made the agent for the collection of the state revenues, as is the case with most of the cities in the United States, which collect for the state most of the taxes from which the expenses of the state government are defrayed. But in addition to being the financial agent of the state it may be entrusted with the exercise of financial powers in its own behalf. This is the case with almost all cities. The grant to the city of such powers would seem to be almost necessary if the city is to be permitted to live a life separate and apart from that of the state. It is of course possible for the state itself to collect all the public revenues and to apportion its share to each city in the state. While there is, perhaps, no state which adopts such a policy exclusively, it is still true that a large part of the revenue of the cities in some countries comes from such a source. This is so in both England and the United States, where the central state government makes large grants to the cities for the purposes of education. As a general thing, however, most of the revenue of the cities comes from the exercise by the cities of financial powers in their own interest. Here they cannot be regarded as acting as state agents.

Police and public welfare. The domain of internal affairs is that branch of administration which embraces all matters not embraced in any one of the other four. It is somewhat in the nature of a catch-all and the various subjects included within it are on that account difficult of classification. At the same time it may be said that these subjects fall under one of two heads: first, police; second, public welfare. The characteristic of the class of subjects falling under the first head, namely, police, is that the action of the government with regard to them limits the freedom of action of the individual. The characteristic of the class of subjects falling under the second head, that is, public welfare, is that the action of the government with regard to them, instead of limiting the freedom of individual action actually enlarges the scope of individual opportunity.

Examples of the first form of action on the part of the government are the preservation of the peace, the care of the public health and the protection of the public safety. In all of these cases the government secures its object by obliging the individual to live in such a way, to pursue such a course of conduct as will not violate the public peace and will conduce to a state of public health and safety. Examples of the action of the government taken positively to promote the public welfare are, the maintenance of means of communication, the provision of means of education, and the support of the poor. In all these cases the government does not limit the freedom of individual action, except incidentally and in rare instances, but on the contrary enlarges the opportunities, both material and intellectual, of the individual in that it offers to him means of improving his material and intellectual well being.

Local functions. While, in the branches of administration which have been considered, the functions discharged by the government are with scarcely an exception regarded in modern times as functions of general government, which may, however, be discharged by the city as an agent of the state, in this branch of internal affairs the functions to be discharged may be almost if not entirely of particular and local interest. Thus if a city establishes waterworks, these works are established with the idea of distributing water to the inhabitants of the city, and only to the inhabitants of the state in so far as they are inhabitants of the city. If it establishes and maintains schools, these schools are established to offer means of education to the children of the city, and only to the children of the state in so far as they are the children of the municipal inhabitants. It builds streets to provide means of intra-urban communication, and sewers to provide for local drainage.

In all these cases the action of the city interests the people of the state at large only indirectly, if it interests them at all. At the same time it must be admitted that the action of the city in discharging this class of functions does in many cases interest the people of the state as a whole, although that interest may be only secondary and indirect, when compared with the interest of the people of the city concerned. Thus take the matter of public health. Unsanitary conditions existing in the city have a bad effect upon the health of the state as a whole, since many diseases are contagious. Take again the matter of schools. Ignorance on the part of the municipal population may exert an influence upon the people of the state as a whole, since it may affect the political capacity of the municipal population, who at the same time that they are municipal voters may be voters at the state elections, and so we might go on.

Nevertheless, the interest of the people of the state as a whole in the discharge of a certain number of these functions by the city is remote, if it exists at all. This is particularly true of local improvements, such as water, gas and electric light works, sewers and means of intra-urban communication and of recreation for the municipal inhabitants, such as parks, and public playgrounds, museums and libraries. It may be said with regard to the other functions in the branch of internal affairs, as it has been said with regard to functions in the domain of judicial and financial affairs, that the city, if it is permitted to act at all in their discharge, acts as an agent of the state. It may be said, however, with regard to local improvements that the city does not act as an agent of the state government, but as an organization for the satisfaction of the local needs of the municipal population which are not felt by the people of the state as a whole.[1]

Position of modern city. We may conclude from this analysis of administrative functions that the development of the past three or four centuries has brought it about that almost all powers, for the exercise of which the cities have struggled since the dawn of municipal government in the middle ages, have been recognized as powers of state rather than municipal government. The exercise of many of these powers has been assumed by the state itself, which denies to the city any participation whatever in their exercise. This is true of powers relating to foreign and military affairs and of most powers relating to judicial affairs. The exercise of another class of powers, including within them some judicial powers and such powers as relate to the preservation of the peace, the public health, the care of the poor and the schools, has not, however, been assumed exclusively by the state. The state on the contrary permits the city to share in their exercise, but regards the city as not acting exclusively or mainly in its own interest, but rather as an agent of the state government.

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[1] The distinction between these different functions of government is so clear that the courts in the United States have built up different rules of law with regard to their discharge. This distinction is well expressed by a New York judge. In the case of Lloyd v. The Mayor, etc., of New York, 5 N. Y. 369; 55 Am. Dec. 347, he says a municipal corporation "possesses two kinds of powers; one governmental and public and to the extent they are held and exercised is clothed with sovereignty, the other, private and to the extent they are held and exercised is a legal individual. The former are given and used for public purposes; the latter for private purposes. While in the exercise of the former the corporation is a municipal government and while in the exercise of the latter, is a corporate individual."

Basing themselves on this distinction the courts have built up the law of torts of municipal corporations. They have held where a city is acting as an agent of the state government it shares in the immunity from liability for damages caused by the negligence of its officers, which is accorded by the law of the United States to the state, but that where the city is acting as an organ for the satisfaction of local needs, where it is acting not as state government, but as local corporation, it is liable for the damages caused by the negligence of its officers.

The massing of population in cities as a result of the changes in economic and social conditions which began at the end of the eighteenth century have made it necessary, however, to regard the city as something more than an agent of the state government; and the legislation of the nineteenth century to which reference has been made, has everywhere granted to cities large powers of a distinctly local significance. The city has, as a result of this legislation, become an organization for the satisfaction of local needs. This revival, so to speak, of the city, which has taken place during the nineteenth century has been due thus, not so much to any reversal of the decision as to the position of the city with regard to the powers which had been decided to be powers of state government, but which the cities had claimed the right to exercise, as to the belief that a new field of municipal activity had been opened which the city must occupy. It is only because the city has attempted during the nineteenth century, in most cases with considerable success, to occupy this field that we have a municipal problem.

City and state. The importance of this new municipal problem, if we may so call it, is due to the fact that urban communities are so large and so numerous that they have come in some states and are coming in others to embrace the major part of the population. So far as this is the case the discharge of even this function of satisfying local needs ceases to have a merely local interest. The state cannot look with unconcern upon the discharge of functions which affect the major or a large part of its population. The result may well be similar to what it was at the end of the eighteenth century. What have been and are regarded as local may become general in interest. When commerce and industry were young they were carried on by such a small part of the population of the state that the management of commercial and industrial relations might well be regarded as functions affecting exclusively the commercial and industrial communities, i. e., the muncipalities. When commerce and industry became general the care of their relations became a matter of state concern. In the same way the care of what have been regarded during the past century as municipal matters may with the increase of urban population and the importance of the municipalities become a matter of state concern. A marked instance of this fact may be seen in the conditions which exist in the eastern district of the State of Massachusetts. There have grown up here a number of urban communities. The competition between them for the sources of water supply has become so keen that the state has had to step in and assume the management of what had been regarded as a municipal matter. The same is true of the network of electrical railways which has recently been established in the United States to furnish means not merely of intra but also of inter-urban communication. What had been local in interest has come to transcend local interest, has become a matter of state interest.

Where conditions change in this way the policy of the state must of necessity be somewhat the same as it was at the end of the eighteenth century. It must, in the interest of the state as a whole, step in and claim as its functions what have been local functions. It may discharge these functions itself, or it may make use of the city as its agent. In either case what was local in interest has by the change in economic and social conditions become general in interest and must out of regard to the interests of the people of the state as a whole be treated as general in interest.

The whole matter of municipal functions therefore is in a state of flux. What may be a municipal function at one time in a given city may not be at another. What is a municipal function in one city may not be such in another. In both cases the reasons why it may or may not be recognized as municipal are that it is or is not merely local in interest. The geographical situation of the city may have an influence in determining the question. Thus, sewerage, in a city like New York, situated on tide water, has less general interest then in Chicago, which is compelled to discharge its sewage into one of the rivers of the state.

At the same time, it will probably be a long time before everything that the city does will become general in interest. For many years to come there will probably be many things which cities may and will do which interest them so nearly exclusively that they may be regarded in attending to them as organs for the satisfaction of local needs. But we shall probably see in the future as we have seen in the past a continual encroachment of the state upon what has been recognized as the domain of the city, due to the fact that what the city is doing has become of interest to the state.

That the position which has been assigned to the modern city under modern social conditions is the right one for it to occupy can hardly be doubted. The economic basis of society has so broadened as compared with former times that the city is not the proper governmental authority to exercise those powers whose exercise may materially affect the interests of the broader economic unit which has come into existence.

Furthermore, the greater heterogeneity which is characteristic of the population of the modern city as compared with that of the ancient city—a heterogeneity which is in large measure due to the wider area of commerce and the peculiar characteristics of modern urban populations which are industrial in character—makes it more difficult for modern than for former urban populations to discharge the governmental functions, which in former times were entrusted to them. Indeed, the character of modern urban populations is such that it would appear to be doubtful whether, in cases where a wide suffrage is the rule, they are capable of discharging efficiently many of the functions the discharge of which modern urban life imperatively demands. For, whether we regard the matter from either an *a priori* or a historical point of view, urban life does not favor the development of democratic government. Urban populations have in the past too easily and too generally fallen under the control of oligarchies and despots or bosses, to permit us to entertain the hope that under modern conditions their fate, if left to themselves, will be much different from what it has been in the past. For the conditions of modern cities certainly favor just as much as did those of former cities the rule of the oligarchy and the despot or the boss.

Municipal home rule, unless those words are used in a very limited sense, has therefore no just foundation in either history or theory until the conditions of city populations are very different from what they are at present. Municipal home rule without limitation is a shibboleth of days that are past. On account of the reverence in which it is held, it is often used by those who have not the true interests of urban populations at heart, or by those who, while possessing good intentions, perhaps are not sufficiently acquainted with the conditions to which they would apply it, and certainly do not consider the problem in the light of the history of western municipal development.

CHAPTER VII

THE LEGAL POSITION OF THE MODERN CITY[1]

Cities subordinate governments. We have thus far seen that urban communities as political entities have almost the world over been placed in a well-defined position in the scheme of government of the greater state in which they are geographically situated, and to which they are politically subordinate. Whatever may have been their position in the past they are now dependent governments, whose powers are determined by a paramount government.

Whatever freedom of action cities still possess is rather narrow and embraces, generally speaking, only the matter of local improvements and public works, which have, however, become of the greatest importance owing to the great development of urban life during the last century and a half. All other functions of government which cities may be permitted by the law of the land in which they are situated to discharge, are recognized by that law as state rather than municipal functions. In their discharge of these functions, cities are recognized by the law as mere state agents subject to the continual supervision of the state government.

In the discharge of those functions which are regarded as local or municipal in character, the cities are in some of the states of the United States protected by constitutional provisions against interference on the part of the state government. Under such conditions the cities may be regarded as having from the viewpoint of constitutional law a sphere of government of their own. Apart from these states, however, the freedom of action which cities actually possess under the law is theirs merely because the policy, adopted at the time by the state to which these cities may be subordinated, is to recognize such freedom. While this policy continues, the cities are protected merely against interference upon the part of the administrative authorities of the state government. For the legislative authority may at any time change this policy.

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[1] Authorities: Dillon, "Municipal Corporations"; Morgand, "La loi Municipale"; Leidig, "Preussisches Stadtrecht"; Schriften des Vereins für Socialpolitik, Vols. 117, 118 and 123.

What is true of European cities is also true of the constitutionally protected cities of the United States, if we regard the matter from the viewpoint of the sovereign state rather than from that of the government of that state. For constitutional provision may be changed as well as legislative statute.

Therefore, in ultimate analysis, all cities, whether constitutionally protected or not, are merely subordinate members of a greater state, which determines, either by its constitutional law or legislative statute, what the city shall do, and to what extent it shall be subjected to the supervision and control of the state government.

This being the case, cities, as political bodies, should not be considered apart from their relation to the greater state of which they form a part. Their position and their powers can be correctly comprehended only when we regard them as parts of a greater governmental system whose general features at any rate must also be taken into consideration. As the general government of a state cannot be understood if we confine our consideration to the organization formulated in the law of the state, we must know not merely that law, but as well the extra-legal political forces which in their operation may seriously modify the action of the formal legal organization.

The general governmental organization of the state affects the cities within the borders of the state principally through its regulation of the relations between the central state government and the municipal governments. For upon these relations depends the degree of actual independence possessed by cities.

If we now examine the law and political customs of different states we shall find that two methods have been adopted in the various states of the western world for the regulation of the relations between city and state. One of these methods may be said to have originated in England and to have been subsequently adopted in the United States. The other method originated on the continent and probably finds its most marked exemplification in Germany.

Supremacy of British Parliament. The English method starts from the idea of a centralization of all governmental power in the legislature or Parliament. It stands upon the basis of a completely unified and centralized state and recognizes no inherent rights or powers in any of the districts into which that state may be divided for purposes of administrative convenience. This conception of a thoroughly centralized state is probably due to the fact that William the Conqueror and his successors were able to prevent the development of any ideas of feudal autonomy in England, and to the subsequent development of an omnipotent Parliament which had jurisdiction over the entire kingdom.

From the conception of a thoroughly unified state, governed by an omnipotent Parliament, is derived the theory of the English law of municipal corporations that all local bodies are authorities of enumerated powers, the enumeration of such powers being made in greater or less detail by the supreme Parliament. The concrete effects of the application of this legal theory are very far reaching. For the legal presumption is against the power of a city to do any particular thing. If, for example, we wish to ascertain whether a city may construct and operate water works, we must examine the law in order to find out whether such a power has been expressly or impliedly conferred upon that city. If a city desires to exercise a power which it is determined that it does not possess it naturally follows that that city must apply to the legislature, the source of authority, for a grant to it of that power.

Enumeration of municipal powers. Furthermore, not only are the powers of cities enumerated, but also such powers as they possess are strictly rather than liberally construed by the courts, which lay down the rule that a city possesses in addition to the powers enumerated only such powers as are indispensable, not merely convenient, to the fulfilment of the purposes for which such city has been established.

Under these conditions cities, unless the legislature adopts the method of general grants of municipal power, must make continual application to the legislature for the grant of the new powers whose exercise the development of greater complexity in urban conditions makes necessary.

By the original English method of municipal incorporation, the charters granted to cities were, as elsewhere throughout Europe, special in character. That is, a municipal charter applied only to one city. The law regulating the position and powers of each city was peculiar. This method of special charters, as we have seen, was adopted in the United States as well, which has clung to it much longer than England. The passage of the Municipal Corporations Act of 1835 marked the abandonment by England of the general idea of special incorporation. The main effect of this act was, however, merely to provide for all English municipal corporations the same general form of organization. For while the act provided a general form of municipal organization and gave all municipal corporations the same powers, at the same time those powers were still enumerated and the enumeration was not sufficiently extensive to allow for the development of those cities whose needs were peculiar. Later, it is true, other general acts applicable to all cities were passed by Parliament which granted further powers. But even these powers have not proved themselves sufficient to satisfy the needs of cities peculiarly situated. Such cities are compelled, notwithstanding this adoption of the principle of general municipal corporation acts, to apply to Parliament for special authority in order that they may exercise powers not contained in the general acts.

In the United States a number of states, generally those of New England, have not adopted the régime of general municipal corporation acts. In others, which have in theory done so, the actual legislation with regard to cities is, as has been pointed out, as special now as it ever was. Apart from a small number of states, it may therefore be said that the charters of American cities are still almost as special in character as they were at the time we received our system of city government from England. These charters are special with regard to not merely the powers which a city possesses but as well the organization with which it is provided.

Changes in organization as well as in powers made necessary by the development of a city can be made only as a result of application to the legislature. The only general exception to this statement is to be found in the case of those cities which are organized after the Missouri plan. In the case of these cities the legislature has not the right to amend the city charter of local government. Amendments are to be made by the citizens of the city, who under the constitution have the right to frame their own charter, provided they keep within the lines drawn by the constitution. Applications to the legislature for special powers are unavailing, since by the constitution the legislature has no power to grant them. The independence of action which cities organized under such constitutions have thus secured, relates, however, it will be remembered, only to those matters which are regarded as local in character, i. e., local improvements and public works, and does not embrace such functions as police, sanitation and education, which the city may be permitted to discharge not as local government, but as agent of the state.

Administrative freedom of cities. According to the theory of the English law, however, municipal corporations acted quite independently of the state government in the exercise of powers recognized to be theirs. Furthermore, particularly under the American application of the English theory of the law of municipal corporations, the city organization has been made use of very commonly by the state as its agent. While police, sanitation and education are recognized by the law as functions of the state government, the city has commonly been entrusted with their care. The city has also often been charged with the collection of the state revenue from property and persons in the city.

The fact, that the powers and duties of city officers, acting in a local capacity, or in that of state agents, are fixed in detail in the law, has made it seem unnecessary to provide for any further state control than that to be found in the power of the legislature, which may interfere by special action in the affairs of any city, if the provisions of existing law are unsatisfactory.

If city officers do not obey the provisions of the law, the courts, which have commonly lost the local character they originally possessed and have become state organs, can, on the application of individuals aggrieved or on that of the officers of the state, keep city officers within the limits of the law.

The only marked weaknesses in this state judicial control over municipal officers are to be found in the local election of the judges of the state courts and in the existence of the jury, which under the law is also locally recruited. In recent years since the office of the public prosecutor has been filled by local election, the action of the criminal courts in the enforcement of state law in the cities has become also subject to local control, i. e., the criminal courts practically cannot obtain jurisdiction until the local prosecutor has acted.

Defects of legislative control. While, apart from these points, the state control over cities is theoretically a strong one, it has shown itself in its application to be at the same time ineffective and destructive of local municipal spirit. It is ineffective because too often the legislature has, on the theory that the cities ought to be the best judges of their needs, acquiesced in the demands of the cities without sufficiently considering their propriety. A marked example of this ineffectiveness is seen in the treatment of municipal indebtedness. While the cities have to go to the legislature for permission to borrow money, and the legislature has thus had the power to prevent municipal extravagance, the legislature has acceded so frequently to the requests of the cities for power to incur debt, that the control which the legislature in theory has possessed might just as well not have existed, so far as concerns any effect that it has had on the amount of municipal indebtedness. Indeed, so serious did the condition of the municipal finances at one time become, that very commonly the people of the states set in the constitutions a limit to municipal indebtedness which the legislatures may not permit the cities to exceed. The cities of the United States have shown themselves, although subject to this legislative control, as extravagant as the cities of Europe had shown themselves in the days when they were independent of state control over their finances.

The control of the legislature over cities has shown itself ineffective also in other directions. Thus the attempt of the legislature to control the action of cities in the regulation of the liquor traffic has been almost universally unsuccessful. Where prohibition laws have been passed it is a notorious fact that the cities quite commonly neglect or refuse to enforce them. Where the attempt has been made by law to prohibit the sale of liquor on Sunday the attitude of the cities is often the same.

While courts can and do enforce constitutional and statutory provisions which prohibit action on the part of cities, such as the provisions limiting the debt incurring power, they can not and do not enforce with the same success many legal provisions imposing positive duties on cities and city officers. The reason is obvious. In one case the prohibition needs no further action for its enforcement. Any attempt on the part of a city to increase its debt beyond the limit fixed in the law can be declared invalid by the courts, and any bonds that may have been issued can be and are held void. But in the case of laws imposing positive duties on cities and city officers, like the laws regulating the liquor traffic, positive action on the part of the city is necessary in order that the law be enforced. Such action the courts are not always in a position to enforce. Cases in the fields of education, public sanitation and public charities and correction may be mentioned where laws imposing positive duties on cities and city officers have been persistently disobeyed. Thus in 1850, the State of New York attempted to establish a general system of local boards of health. But although the acts passed by the legislature "were mandatory in form, there being no authority to enforce them, but few local boards were established."[1]

This legislative control has proved itself to be also destructive of local spirit. The legislature has failed to distinguish between the local government and the state agency of cities, and has extended its control over the one branch of activity as well as over the other. Distinctly municipal policies are frequently determined by the state legislatures. The legislature cannot be blamed for acting as it has acted because hardly any distinction has been made in the minds of the people between these two kinds of activity and because no theory of the proper sphere of municipal freedom of action has been formulated.

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[1] Fairlie, "The Centralization of Administration in New York," *Columbia University Studies*, etc., Vol. IX, p. 543.

The exercise of the legislative control over cities has been disastrous in its effect upon the cities' interests finally, because this control has been exercised in too many instances in the interest of the state and national political parties and not in that of effective municipal government. The organization of cities has too often been changed not because the change made was expected to make the city a more efficient governmental machine, but because it favored the political party in control of the state legislature.

This misuse of its power over the cities by the legislature has been due to the general extra-legal political situation, which, it has been said, we must understand if we are to discuss intelligently the problems of municipal government.

American system of government. The general system of government adopted both in the states and in the United States national government is based on the theory of checks and balances. By this theory the powers of government are apportioned between three departments which are made as separate from and independent of each other as the mind of man can well devise. Unless these departments can be coördinated it is difficult for the government to accomplish much. This governmental incapacity, if we may so call it, was not regarded by those responsible for the adoption of this system of government as a defect. For in the days in which the system was framed much government was deprecated. The political philosophy of our fathers placed great reliance on individualism.

Almost from the time this system was established, however, problems of the most momentous importance had to be solved. It had to be determined, first, whether the United States was to be a democratic or remain an aristocratic republic; second, whether it was to be a nation or a confederation, and third, whether the labor system known as slavery, which had been inherited from the days of colonial dependence, was to be extended or abolished.

There was thus great need of a strong government. The system as originally established was not strong because so many authorities had to pull together in order to accomplish anything. But as the system of government adopted was incorporated in documents which were difficult if not impossible of amendment, the formal system of government could not well be changed. Since that system provided in no way for that coordination of governmental departments without which harmonious and effective action could not be ensured, means to secure the desired end had to be sought for outside of the system. This means was found in the organization of well organized and disciplined political parties, which strove by every means within their power to get control of all governmental departments in the belief that in this way and in this way only they could force these departments to act in harmony and thus secure a solution of the problems before the country.

Political parties. In order to build up the parties administrative efficiency in both the national and state governments was sacrificed through the introduction of the partisan political maxim that "to the victors belong the spoils." Public office was given as a reward for partisan political service, and little attempt was made to secure official incumbents because of their fitness for the discharge of the administrative duties attached to the offices which they secured. The questions asked were: does the applicant hold the proper opinions on the extension of the suffrage, on states rights and slavery; and will he, if given the office, further the policies of the party which has selected him?

During our early history the city was recognized by the law, which was influenced by the theories held as to the position of cities in the eighteenth century, as a mere agent of state government. The distinctly local problems of city government were not so important in our early history as they are now. Cities were comparatively few and unimportant. Such interests as cities had were naturally, therefore, sacrificed in the endeavor to solve the most important problems which the American people had to face. It is therefore not to be regarded as remarkable that the state legislature, which completely controlled the fate of cities, and was at the same time the hotbed of partisan political strife, should have made use of its unquestionable legal powers over cities in the interest of the dominant political parties.

But this is not the whole of the story. Parties, to be strong, must have an organization which permeates the entire political system. That organization must certainly extend through the urban populations where the suffrage is general. For nowhere in the state are there so many state voters in similar areas as in the urban communities. Further, a political party formed for the purpose of putting into effect a state policy, is irresistibly tempted to busy itself with distinctly city politics. For the cities, as we have seen, are, apart from the control exercised by the legislature and the courts in their interpretation and application of the law, the uncontrolled agents of the state in the discharge of a long series of functions. The city police enforce the state laws. The city boards of education manage the state educational institutions of the cities. The city financial authorities often collect the state taxes, while the general municipal authorities commonly have charge of the elections in the cities for state officers. State political parties have thus in addition to their evident duty of influencing city populations in their capacity as a state electorate, a perfectly proper and justifiable motive for endeavoring to obtain control of the machinery of city government. For, if a state policy with regard to the sale of liquor in the cities is successful, its success is in large measure due to the attitude of a city and not a state police. If state elections in cities are honest it is because of the honesty of municipal and not state authorities.

State parties are liable to be tempted to interfere in city politics and to strive for the control of city government because of other motives, which, while perhaps less proper, are no less strong than the ones just enumerated. The administration of all cities and particularly large cities necessitates the existence of numerous offices and the making of many profitable contracts. If the state political party can obtain control of the city government it can arrange that city offices are given to its adherents and can make it more probable that city contracts are awarded in such a way as to do the party the greatest good.

It may be said without danger of contradiction that little consideration was given by the people of this country to municipal affairs until after the close of the war, by which time our great national political problems had been solved. About that time, however, there began an agitation for better administrative conditions generally, which resulted in the adoption of the national civil service law of 1883, and for a curtailment of the power of the legislatures over cities, which resulted in a series of constitutional provisions attempting, but generally without great success, to protect cities against legislative action.

Somewhat later, the attempt was made by a variety of legal measures to protect cities from the undue control of political parties. Primary and other election laws were adopted, which subjected political parties to government control and distinguished more clearly between municipal and state politics. This legislation was preceded if not caused by the development of the popular feeling that municipal should be separated from state and national politics—a feeling which led to the establishment of such organizations as the National Municipal League and innumerable local non-partisan political organizations in cities.

All these influences have tended to give to the American city a position, which from both the legal and extra-legal points of view, is much more independent than it was forty years ago. While it has not been possible to make a clear-cut distinction between the city as a state agent and the city as an organ of local government, or between the local and state organization of political parties, at the same time it has become much easier than formerly to separate municipal from state and national issues, and to consider municipal issues on their own merits apart from the influence which they may have on state and national issues.

Now, during a large part of the nineteenth century, nothing in the law relative to cities prevented either the misuse of their power over the cities by the legislatures of the American states or the control of city politics by state and national political parties. There were few if any constitutional provisions which effectively limited the powers of the legislatures. There were no civil service laws which prevented the misuse of municipal appointing powers, and no primary laws which distinguished between municipal and state elections. Indeed, the fundamental theory of the law of municipal corporations both recognized that the city was but an agent of the state and as such under the practically unlimited power of the state legislature, and encouraged the state legislature to interfere with cities through the adoption of the rule that cities were authorities of enumerated powers, which were to be strictly rather than liberally construed, and which could be enlarged even when such enlargement was absolutely necessary only by action on the part of the legislature.

The feeling of the people generally favored the control of city elections by national and state political parties. For, on account of the absence of really serious municipal problems and the necessity of solving the great problems of democratic government, national unity, and negro slavery, the mind of the average citizen was so occupied with national problems as to leave little time or inclination for the consideration of what he properly regarded as the parochial problems of mere city government.

English system of government. The method of assigning their powers to cities which has been spoken of as the English method did not have the same effects on the actual position of the city in England that it had on that of the city in the United States. The reasons for this fact are to be found in the legal position which the city occupied in the English system of government, and in the extra-legal, i. e., the political, conditions of English life.

In the first place, as has been pointed out, since the passage of the Municipal Corporations Act of 1835, municipal charters in England have not been as special as in the United States. This act provided for all cities a uniform system of government of a very general character, which could be adapted to the needs of particular cities by the action of those cities. Parliament was not as frequently invited to interfere by special legislation in city affairs as were the legislatures of the United States. Parliament by a number of standing orders adopted a procedure for special legislation which made such legislation both difficult and expensive and offered guaranties against hasty and improper legislative action. Parliament also, through the establishment of such boards as the Local Government Board at London, created authorities of an administrative character to exercise part at least of the control which it itself might have exercised, and has quite commonly asked the advice of such boards where it has still ventured to exercise its control. In all these ways special legislation has without any attempt at a constitutional limitation of the powers of Parliament, been greatly decreased in amount and at the same time improved in character.

Furthermore, the extra-legal conditions have been quite different in England from what they have been in the United States. The establishment of cabinet government in the early part of the nineteenth century has coördinated the legislative and the executive authorities and has therefore made unnecessary the tremendous expenditure of political energy and the sacrifice of administrative efficiency both general and local, which seemed to be necessary in order to build up political parties in the United States. Finally, the political issues before the English people have not until recently been of the supreme importance which characterized the early political issues of the United States.

Political parties. Under these conditions the political parties did not strive in the same way as in the United States either through their influence in Parliament or at municipal elections to control the city governments. Municipal issues separate from imperial issues could be formulated, and demand and receive attention. Municipalities had the opportunity to develop comparatively free from the disturbing influences of imperial politics. As England was even at the beginning of the nineteenth century highly advanced from a commercial and industrial point of view, it had, as compared with the United States, numerous and important cities with a large urban population. Distinctly municipal needs and problems were therefore much more important than in the United States.

All of these conditions, legal, political and economic, naturally brought about a different attitude on the part of the people generally towards the city, whose sphere of local government gradually expanded during the course of the nineteenth century;

and, as a result, secured to the city an actual, if not legal, freedom to solve its own problems, which it did not secure in the United States. It was only after the presentation of the important political issue of Home Rule for Ireland—an issue which it was believed involved the integrity of the Kingdom—that the political parties showed signs of desiring to get control of the city governments. Traditions of non-partisan municipal government were, however, so strong that little harm has so far resulted from this attempt to change the policy of England towards its cities. Furthermore, the facts that suffrage was not so wide as in the United States and that fewer officers were elected in the cities both made the organization of parties easier, and the work of the parties less. It was not necessary therefore for parties to be so strong as in the United States, nor for administrative efficiency to be sacrificed in the interest of strong parties, as was the case in the United States.

The position of the French city. While in England the theory of the law is that cities are authorities of enumerated powers, on the continent by the theory of the law the cities are regarded as authorities of general powers. The French law of 1884 expresses this theory in the statement that the "municipal council shall govern by its deliberations the affairs of the commune." An examination of the other provisions of the law shows that there is nowhere a statement as to what "the affairs of the commune" are. All that one finds relative to the competence of cities is a series of provisions which limit the power of the city by giving some authority of the central government the right to declare void a resolution of a city council on the ground that it is in excess of the council's powers, or which subject certain resolutions of the council to the necessity of being approved by some higher authority. In other words cities may do anything which they have not been forbidden to do or which has not been entrusted to some other authority. The presumption is in favor of the power of cities to act and the work of the student who wishes to ascertain whether a city can do a given thing is directed to the ascertainment of the limitations upon their general power to act rather than to an examination of the enumerated powers granted. The only general exception to this statement which should be made is as to undertakings which are regarded by the French courts as commercial rather than governmental in character. In such cases the courts have in a number of cases refused to regard these undertakings as included within "the affairs of the commune." The courts have thus refused to regard a local railway as an "affair of the commune."[1]

Furthermore, the charters of all cities are contained in a general act which is general, both because it applies to all cities and because it lays down general principles as to the organization and powers of cities. Cities may within the limits of the act provide their own organization and extend their sphere of action as they see fit. The limitations on city action contained in the law are, it is true, rather numerous, and the cities are subject to a strong central administrative control whose extent and operation will be considered later.

But the cities under this arrangement are considered to be not merely agents of state government but as well organs of local government which shall, under the control of the central government of the state, determine what their sphere of action as such organs shall be.

The same need for strong national parties as was felt in the United States has not been felt in France, partly it is believed, because of the adoption of the principles of cabinet government, and strong national parties have not as a matter of fact developed. City government has not, as in the United States, been sacrificed in the interest of national issues. But the very weakness of the national parties would appear in recent years to have had a bad influence on the administrative efficiency of both the general and the local government, including that of the cities. Municipal elections are frequently decided on national issues, and municipal affairs are in some degree, much more than in England, influenced by considerations of national politics.

The Prussian city. The principle that cities are authorities of general powers lies at the basis of the Prussian law of municipal corporations. The municipal law of 1808, says Leidig, "first recognized that the corporations which formed a part of the state organization had their own personality distinct and apart from that of the state and that they should pursue their own ends independently within the sphere of competence delimited by the action of the state."[1] This competence is not, however, enumerated or defined in the law, which recognizes that the sphere of municipal activity embraces the satisfaction within the city limits of all the social needs of the city inhabitants in so far as the law has not entrusted to other authorities the discharge of functions, which are theoretically municipal in character. In such a case the theoretical character of the function will not cause it to be regarded as within the sphere of municipal competence.[2]

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[1] See *infra*, chap. XV.

The Prussian Superior Administrative Court in a decision,[3] interpreting the Prussian law as to the sphere of activity of cities has said that no "law has fixed limits to the activity of cities as cities. To the cities is entrusted severally the care of the moral and economic interests of their citizens, in so far as special laws have made no exceptional provision for the care of such interests. In default of such laws the limits of municipal activity, over against the state as the superior controlling authority, are to be found only in the city's local territorial jurisdiction, i. e., in the local character of municipal functions. Whatever the city within its boundaries and by means of its own resources can do to further its interests is not in principle at any rate outside of its jurisdiction and may be regarded as a municipal matter." In another decision,[4] the same court has said: "A muncipal corporation may through the application of its resources make a subject of its activity, everything which will further its corporate welfare or the material interests and intellectual development of its members. It may of its own motion inaugurate institutions and enterprises of general utility which subserve these ends. . . . It has in general the care of the moral and economic interests of its members, and may employ its resources for this purpose, but—and this is the limit the passing of which will result in the violation of the law—upon the supposition, which is always to be kept in mind, that it and its organs limit themselves to the furtherance and representation of purely local interests."

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[1] "Preussisches Stadtrecht," p. 498.

[2] Ibid., pp. 36 and 105.

[3] Entscheidungen des Oberverwaltungsgerichts, Vol. XIII, pp. 89, 106.

[4] Ibid., Vol. XIV, p. 76.

As in France, the sphere of municipal competence is delimited rather by the prohibitions laid on city action than by an enumeration of powers. As in France, also the line within which the city may act is drawn rather closely by the provisions of law which subject municipal action to central administrative control.

Political parties of great strength have not for some reason developed in Germany, and, as in England, cities have been able to devise and put into execution purely municipal policies, little if at all affected by considerations of national politics.

Thus in continental Europe, as well as in England, conditions are such as not to encourage interference in city affairs by that arch political body, the legislature. Special legislation with regard to cities is almost unknown and the organization of cities may be framed with little regard to the interests of political parties and with the idea of fashioning the best possible machine for the discharge of the functions which the city must discharge.

Cities and political parties in Europe. By what has been said it is not intended to say that national political parties take no part in and have no influence on municipal elections. Such a statement would be quite contrary to fact; for everywhere in Europe, and particularly in France, candidates for municipal office have national party affiliations which are commonly known and unquestionably influence the result of the election. But once in office, public opinion generally demands of them that they discharge their duties as representatives of the city with its interests in mind.

The legal and extra-legal conditions in Europe are thus such as to encourage rather than discourage the consideration and decision of municipal issues on their merits and not as influencing national issues.

No change in our law would be so beneficial in its effects on the position of American cities as a change from the theory that cities are authorities of enumerated powers to the theory that they have general powers of government. The experience of Illinois where, after special legislation was prohibited, the legislature passed a municipal corporations act which did not descend into great detail but granted municipal corporations general powers as to both organization and action, shows that no better method can be adopted to discourage special legislation.

Of course, such a change as has been advocated would not have the immediate effect of giving the American city the actual freedom of action it needs, since it would remedy only one of the existing evils. But if combined with the adoption of the merit system of appointing to municipal office and a primary and an election law which should clearly distinguish between state and municipal elections, it is believed a long step would be taken in the right direction, viz., that of recognizing that the city is, as we have seen is actually the case everywhere in Europe, an organ for the satisfaction of local needs as well as an agent of state government; and that in the first capacity it should have large freedom of action and wide powers of initiation.

CHAPTER VII.

STATE CONTROL OVER CITIES[1]

Necessity of state control. The fact that the city is discharging many functions which have been assigned to it as an agent of the state government makes it necessary that the state shall exercise some sort of a control over it. The further fact that matters which are at one time regarded as of municipal interest become, with the course of social development, of interest to the state as a whole makes it necessary that the state should always have the power of extending its control over matters which may at one time be regarded as distinctly municipal functions. Finally, the state should have a control over the financial administration of cities so far as the carrying on of that administration necessitates the exercise of the taxing and the borrowing powers.

For these reasons there must be provided in the governmental system a state control over the actions of municipalities. But while from the constitutional point of view the control which the state may exercise over municipalities should be a very broad one, from the point of view of legislative policy this control should not be exercised except when necessary. Our study of the history of municipal development shows us that the too extensive exercise of the control of the state over the municipality prevents the development in the municipality of that local life whose existence is so requisite to the proper occupation of that great field of activity opened to the modern municipality by the social development of the nineteenth century. There is a great danger that the municipality may be hampered by the

[1] Authorities: Same as for preceding chapter; Hatton, "Digest of City Charters"; Munro, "The Government of European Cities"; Croissy, "Dictionnaire Municipale"; Leidig, "Preussisches Stadtrecht"; Orlando, "Principii di Diritto Amministrativo"; Arnold, "Law of Municipal Corporations."

state in the exercise of powers which are necessary to municipal development. There is also great danger that the interests of the municipality will be disregarded by the state, that the municipality will be sacrificed to the state.

Methods of control. Two methods have been adopted to keep the necessary control of the state over the municipality within its proper limits: one has consisted in the attempt to assign a sphere of activity to the city within which the organs of the state government may not legally enter and in which the municipalities may act free from state control. This is the course which has been pursued in most of the states of the United States. It consists, in the first place, in forbidding the legislatures of the state governments, and indeed all the authorities of the state governments, to interfere in any way with certain matters specified in the state constitutions and entrusted to the municipalities. It cannot, however, be claimed that this method of regulating the relations of city and state has been successful. The attempts of the people to limit the powers of the legislature over the cities have been largely frustrated by the courts, which have decided both that the sphere of municipal activity protected by the constitution is a very narrow one, and that special legislation is, notwithstanding the constitution, permissible under the device of classification.

The reasons why the courts took the attitude they did are, in the first place, the necessity for local development, which involves some amount of special legislation under a scheme of enumerated powers; and, in the second place, the fact that the legislative control was the only control over cities which existed in the American administrative system. If the courts therefore had construed the constitutional provisions so as to destroy this control there would have been great danger that the cities would become *imperia in imperio* and that thus state government would have disintegrated.

It would therefore seem as if any method of limiting the control of the state over the city, which is based upon a constitutional denial of the power of the state government to interfere in municipal matters, were foredoomed to failure. It would seem that in order to solve this problem of state control over municipalities the attempt should be made so to organize the control that the state authorities would not be tempted to exercise it improperly, while the existence of their power should not be denied. It has been shown that the main cause of the improper extension of the control of the state over the cities in the United States is to be found in the very narrow powers which the city possesses [1] and that, if we may judge from both European and American experience, such improper extension of the legislative control over cities may be discouraged by the grant of general powers of government to the cities.

The mere grant to cities of general powers of government does not, however, make any provision for the control which it has been shown that the state must exercise over municipalities. Indeed, the recognition of general powers in the municipalities would be extremely dangerous to the welfare of the state as a whole if some means were not devised of assuring to the state a control over the actions of the cities. This control is on the continent and to a less degree in England an administrative control, which is the second method of providing for the necessary state control.

Administrative control. While in England and the United States the centralization of government which has been secured is a legislative centralization, on the continent the centralization has been administrative rather than legislative. The great influence of feudal ideas on the continent prevented the development of the idea of the unity of the state, and no general representative legislative authority was established in early times. There were formed in both France and Germany local legislative bodies whose powers varied considerably at different times. The only unity in the state government was to be found in the administration with the Crown at its head. The purpose of the absolute monarchy everywhere was to realize the idea of national unity. The absolute monarchy on the continent did, it is true, endeavor with varying degrees of success to extend its centralization to matters of legislation as well as of administration, but the chief success of the Crown in its attempts at centralization was in the domain of administration. By the time of the French Revolution its success was almost complete. In France, as we have seen, the Crown had succeeded in forcing its general scheme of municipal administration on all cities in the Kingdom and had, as a result of the general ordinances in which this scheme was to be found, secured a very large control over the administration of municipal affairs, appointing most of the important officers. The influence of the French Revolution was in the same direction. It secured unity to France and the great law of 1800 made the city but a part of the central administration, giving the central government the appointment of all city officers and subjecting their action to a most strict central administrative control. After the unity of the state had been secured, however, and the supremacy of the central legislative power had been acknowledged the adminstration began to be decentralized. This decentralization did not, however, result in the denial of the right of the central administration to control the government of the cities where the interests of the state as a whole were affected. It merely provided that, where privileges of local government could be granted with due regard to the interests of the state, this should be done.

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[1] *Supra*, p. 102, et seq.

The same is true of Prussia. The centralization of municipal administration had the same result as in France, that is, the practical absorption of all municipal administration into central state administration. In Prussia further as in France, and largely due to the same causes, a central representative legislature played a very unimportant rôle. Indeed, it did not appear in Prussian history until about 1848. The administration with the Crown at its head attended to legislative as well as to administrative matters. Since 1808, the date of the passage of the Great Cities' Act, the administration, as in France, has been much decentralized. Particularly is this the case within the last fifty years. But, as in France, notwithstanding the grant of large privileges of local government to the cities, the central administration has large powers of control over their actions in so far as these affect the interests of the state as a whole.

The unimportance, indeed the absence for so long a time of any central legislative authority, had of course an important influence on the position which the administration occupied in the post-revolutionary system of governmental polity. Whereas, in England, owing to the early recognition of the supremacy of Parliament, the central legislative body, administrative officers owed allegiance to that body and official duties were minutely prescribed in its mandates, on the continent, on account of the absence of any central legislature, administrative officers owed allegiance to some administrative superior whose instructions delimited their competence and prescribed their duties. When the central state legislature was finally established on the continent it naturally occupied a position very different from that of the English Parliament and the American state legislature. The fact that the detailed duties of subordinate adminstrative officers had from time immemorial been prescribed by royal ordinances and ministerial circulars of instructions made it perfectly natural for the legislature, so far as it interfered with the administration at all, to confine its interference merely to the laying down of general principles which were to be elaborated in detail by ordinance and instruction and to permit the administration to continue to exercise in the future as it had exercised in the past a control over the governmental affairs of the local communities. This control hereafter differed from what it had been in the past only in that it was no longer entirely arbitrary but was to be exercised within the general limits fixed by legislation and was in some cases subject to judicial revision. But the predominant position of the administrative organization and its recognized efficiency made it not only unnecessary but also inexpedient and unnatural for the legislature to assume the same special control over administrative matters which it had been the recognized policy of the English Parliament to exercise.

To these reasons is due the fact that on the continent the central administrative control exercised over municipalities, which is the remnant now left of the idea that all administration is state administration, is merely a part of the general administrative centralization, and is exercised by the ordinary central administrative authorities, either the executive departments at the capital of the state or the general representatives which the central administration has always had and now has in the localities and which are an essential part of a centralized administrative system.

In England a centralized administrative control similar in many respects to that existing at the time of the continent was developed during the nineteenth century. It could not, however, be organized in the same way in which the continental system was organized. The original local self-government system of England could not adapt itself to the changed conditions necessitated by the existence of a central adminstrative control, without being completely remodeled. The central administration had no representatives in the provinces, but matters of general interest were attended to there by local officers, that is, the justices of the peace. Therefore the new legislation of Parliament, beginning with the Poor Law Amendment Act of 1834, superimposed upon the original local self-government system a new system of administration with what is now the Local Government Board at London at its head, to which have been given large powers of control over the local authorities established since 1834. When the matter of education became one in which the local communities interested themselves, a similar control over the exercise of their school powers was vested in the Privy Council.

A comparison of the present continental and English systems of central administrative control over municipalities must therefore start from different points of view. On the continent the start must be made from a completely centralized administration. In England we must start from a completely decentralized system.

In Prussia. On the continent then at the beginning of the last century the city was merely a part of the general administration and its authorities were for the most part appointed by the central administrative authorities. The first change was made by Prussia in the act of 1808, which gave large powers to the cities. But notwithstanding the great steps which have been taken in recognizing that cities have a sphere of action which is theoretically independent of that of the central government, the old idea that cities are parts of the general system of administration still has influence on their relations with the central government.

This is seen in the power possessed by the central state administration to disapprove the choice by the city councils of their most important executive officers, and to dissolve the city councils themselves. Up to 1883 the central administration had the further power of unconditionally vetoing all resolutions of the city council and the city executive. Since 1883, however, the council or the executive may appeal to the proper administrative courts from such veto. A similar power of appeal is given to the council against the exercise of the veto power over council resolutions which is possessed by the city executive. The courts which hear these appeals in first instance are not controlled altogether by officers learned in the law, but by lay members who are elected indirectly by the people. The powers of veto of the professional central administration and of the city executive, in whose formation the central administration participates through its power of approving the appointments of the council, can therefore be exercised neither arbitrarily nor altogether in the interest of the state.

Finally, the central administration may, when the local authorities neglect or refuse to do so, insert in the budget of the city, appropriations for obligatory expenses, that is expenses for branches of administration which the law says shall be supported by the cities and may make provision for the levy of the necessary taxes. Appeal from its decision may be taken to the supreme administrative court, a body of a purely professional character and learned in the law. The difference in the bodies to which appeals go in these cases is due to the difference in the nature of the decisions appealed from. Those of a political nature, to be decided from the point of view of expediency, go to a popular body. Those of a legal nature go to a body learned in the law.

So far it will be noticed that with the exception of the powers of dissolving the municipal council and of approving municipal appointments, the control which has been considered, has been formed mainly with the idea of keeping the city within the bounds of its legal competence. While its legal competence is ultimately determined by judicial bodies, the powers of control of the central administration are very valuable, inasmuch as the law thus makes it expressly the business of the central administration to force the cities to obey the law. Reliance is not placed upon private interest alone, as in the United States, where practically the only way in which the courts can keep the cities or other authorities within the law is as a result of the application of private persons whose rights have been violated by the illegal acts of the authorities complained of.

Prussian cities agents of the state. As has been intimated, the Prussian city is the agent of the state government in a number of cases: thus, a city of 25,000 inhabitants is exempted from the circle, a division corresponding to the American county, but generally smaller, and forms by itself an urban-circle, as it is called. All the duties devolved upon the ordinary circle then are devolved upon the cities. Thus again, the city generally attends to the administration of the schools, and to the care of the poor, and has functions to discharge relative to the administration of justice. Where it is not of large size it also has the care of the police, which term is used in its widest sense, embracing not only the preservation of the peace but also the care of the public health and the protection of the safety of the people generally, including the prevention and extinguishment of fires. In the case of the larger cities, however, the law, recognizing that the police is not a local matter, gives the central administration the power, if it sees fit, to take this matter into its own hands by appointing the persons who are to have charge of it. Where this is done the expense of the police administration is shared between the city and the central government in the proportions provided for by law.

In all of these cases where the city is acting as agent of the central government it, as such agent, is subject to the direction and control of the higher authorities having jurisdiction over these branches of govermental activity in the country at large. The fact that these functions are attended to by the city or city officers does not change their character. The cities are sometimes given discretionary powers relative to these matters, mainly of a supplementary character, but the central administration does not lose its power to insist upon the taking of a certain minimum of action.[1]

The central control, further, is exercised over the financial administration of the city. Thus, subject to certain limitations contained for the most part in the German constitution and adopted in the interest of German unity and the Imperial finances, Prussian cities have the power to impose almost any kind of tax they see fit. They may thus impose direct and indirect taxes provided such municipal direct taxes are levied on lands, buildings, income and trade in certain ratios. Where it is desired to depart from the ratios fixed by the law the consent of the central administrative officers must be obtained. Central approval is also necessary for all loans increasing the city debt.

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[1] This fact comes out most clearly in the school administration, which is one of the most important matters attended to by the city. In the first place the general system of instruction is prescribed by central legislation and controlled by the central administration, although the city school board, which consists partly of members selected by the city council, attends to the details of school administration, such as managing the school property, carrying out the provisions of the school budget which is ultimately fixed by the city council, supervising the execution of the school law, and compelling school attendance.

In the second place the city council generally appoints, subject to the approval of the central administration, all teachers and, most important of all its school duties, attends to the school finances. Here, however, the council is subject to the control of the central administration, which may force it to provide the necessary school buildings and apparatus and money for compensation of teachers. In case, however, of difference of opinion between the city and the central administration as to new school buildings or repairs of old buildings, the matter is decided on appeal by the proper administrative courts, and in making provision for new teachers the supervisory authority has to bear in mind the financial conditions of the city as well as the needs of the schools.

While every city is obliged by law, which it may be forced by the central administration to obey, to support the necessary primary schools, it may undertake the maintenance of higher schools. Where this is done the city school board has charge merely of the physical conditions of the schools, the pedagogical side of their administration being under the control of the principals and of the central school authorities. Finally, it is to be noticed that the central state government in case of necessity gives aid to the cities to enable them to maintain both the higher and the lower schools. (Leidig, op. cit., p. 464, et seq.)

It is to be given by one of the popular authorities referred to.

In France the main features of the system of central control are the same as in Prussia, although the control is not nearly so complicated because of the greater simplicity of the general French administrative system. We find the central administration has, as in Prussia, the power to dissolve the municipal council and remove the executive, namely the mayor and his deputies, although its approval of their election is not necessary. Further, the mayor, who is regarded for a series of matters as the direct agent of the central administration in the city, acts as such agent under the direction of the central administration, which may not only suspend him and remove him from office but may itself perform any of the duties of the mayor which he refuses to perform, and may disapprove any of the police ordinances which he issues.

The central administration may also as in Prussia force the municipality to perform the duties imposed upon it by the law, by inserting in the municipal budget appropriations for obligatory expenses in case of the refusal of the city council to act, and by making provision for the levy of the necessary taxes, and may prevent the municipality, by disapproving its actions, from exceeding the powers granted to it by the law. The same sort of control as in Prussia is given to the central administration over the financial administration of the city.

Finally, the same principle has been adopted of allowing the cities to appeal from the decisions of the central administration disapproving resolutions of the municipal council on the ground of excess of powers. The appeal goes to the administrative courts, which in France are not however at all popular in character, but are almost a part of the professional central administration.[1] State control over cities in Italy is administrative in character and is in its general features modelled on the French system.

Such is the way in which the central administrative control over cities is organized and exercised on the continent. It is, as has been said, a part of the general administrative system and is a relic of the time when municipal administration was regarded as a part of general state administration; but, as will be shown, under it municipal corporations have a very large sphere of local action, and whether due to it or to the form of organization or to other causes, municipal government has been, particularly in Germany, very successful.

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[1] Law of April 5, 1884, article 67.

In England the central control over cities is quite differently organized. The English municipal organization proper is a part of the old English local government system, which was quite decentralized. The only original method of central administrative control over cities is to be found in the power of the Privy Council to disapprove municipal ordinances. All other control was exercised through special legislation of which it has been shown there has been a large amount even since the passage of the general Municipal Corporations Act of 1835.

With the course of time, however, the power of the central administration over cities has been strengthened. This has come about in two ways: in the first place, as the general administrative system of the country has been more centralized the city, upon which new functions of a public character have been imposed, has been subjected to the central administrative control in the same way as other local authorities. In the second place, the general spread of centralization has not failed to have its influence on the purely "borough" affairs, i. e. affairs from time immemorial attended to by the boroughs.

The first step in centralizing English administration was taken in the Poor Law Amendment Act of 1834, which established a central poor law commission, afterwards converted into a board, to control the actions of the local poor law authorities which were then established. The city has, it is true, never been given the charge of the poor and a municipal district bears no relation to the poor law district, the union.[1]

English cities agents of the state. But the next step, taken in the public health act passed about the middle of the century and later consolidated with its amendments into the Consolidated Public Health Act of 1875, made the city an urban sanitary authority. As such urban sanitary district it has been made subject, as all sanitary districts, to a very strict control exercised by the Local Government Board established in 1871, and the successor of the old poor law and health boards. The functions discharged by a municipality as an urban sanitary district were so wide in extent and so varied in nature, being in many cases only indirectly of a sanitary nature, that it was believed that the name "urban sanitary district" was not at all indicative of the functions to which the municipal authorities attended as urban authorities. In 1894, therefore, when a considerable change was made in the local government institutions by the passage of the Local Government Act of 1894, the term "urban sanitary district" was abandoned and the term "urban district" adopted. Since the passage of that act every borough or municipal corporation is at the same time an urban district and the corporate authorities are urban district authorities. It is said that as urban district authority the borough has more functions to discharge than as borough or corporate authority.

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[1] The recent report of the Poor Law Commission advocates the grant to the city of the care of the poor.

When public schools in the American sense of the word were established in 1870 the borough was made a school district. But the borough council did not become the local school authority, which was a school board elected as were all other school boards. By the Education Act of 1902, however, the borough council has been made the borough school authority and acts, as do all school authorities, under the central administrative control of the Education Department. The centralization of the general administrative system of England has thus subjected to a central administrative control many functions such as the care of the public health, schools and streets, which are commonly regarded in the United States as functions of city government.

Central control of local matters. In the second place, matters always attended to by the municipal boroughs have felt the influence of these centralizing tendencies. Acts of 1856 and 1888 provided for a consolidation with the county police of the police forces of all boroughs of less than ten thousand inhabitants. The act of 1856 further introduced a central control over the municipal administration of police in the larger boroughs by providing that the central government should aid all boroughs in maintaining a police force, provided a certain standard of efficiency was maintained. This is to be evidenced by the certificate of the Home Secretary granted only after an inspection of the work done by the borough.

The financial powers, particularly the borrowing powers of cities acting both as boroughs and as urban districts, have been limited in that they have frequently been subjected to the central administrative control now exercised by the Local Government Board at London.[1] But this control has been much weakened through the passage of special acts of Parliament giving permission to depart from the rule laid down in the general law, a fact which shows how much less useful is the legislative than the administrative control when looked at merely from the viewpoint of the exercise of an efficient control in the interest of the state.

While all other local corporations in England, as well as cities in France, are subject to a central audit of accounts, the English borough is not, except in the case of school accounts; although it is provided that after the local audit has been made borough accounts must be filed within a month with the Local Government Board at London. Somewhat the same plan is adopted in Prussia with regard to municipal accounts generally.

The central control which had been distributed among various central authorities for each branch of administration into which the central control has been introduced was, with the exception of the control over schools, centralized in the Local Government Board at London at the time of its establishment in 1871. The Local Government Board has under it a corps of officers, inspectors, auditors, etc., who supervise the administration of the localities.

In the United States. The failure of legislative control in the United States has caused recourse in a number of instances to administrative control. Thus in the state of New York the administration of the civil service law by cities is subjected to the control of a state civil service commission which has the power to disapprove the rules of the municipal commissions. In a number of states, such as Ohio, the finances of the cities have been subjected to a similar state control.[1] In a large number of states the management by cities of schools and charitable and correctional institutions and of the public health must be conducted in accordance with rules laid down by state administrative authorities, such as state school boards and boards of charities and health and state superintendents of schools, who also have rights of inspection and supervision of the actions of city officers.[2] When we consider this movement in the direction of administrative centralization together with the constitutional limitations of legislative power which have been described, we can hardly fail to reach the conclusion that the state control over local corporations in the United States is being changed from a legislative into an administrative control.

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[1] Arminjon, "L'Administration Locale de l'Anglěterre," p. 215. Maltbie, "The English Local Government Board," *Political Science Quarterly*, XIII, p. 232.

Comparison of legislative and administrative control. The success of any system of state control over cities must be judged from two different points of view, viz., that of the city and that of the state. The control should be exercised in the interest of both the city and the state. It should be exercised in the interest of the city in that it should permit of the greatest possible local enterprise and initiative. It should be exercised in the interest of the state in that it should secure proper attention by the city to those matters which interest the state and in which the city is acting merely as the agent of the state government. A system of state control over cities which does not bear both of these things in mind and does not secure both local enterprise and efficiency in matters affecting the state as a whole must be regarded as unsuccessful. Let us look at this matter in the first place from the viewpoint of the city.

Effect on municipal activity. A good description of the activities of British municipalities is to be found in Dr. Albert Shaw's *Municipal Government in Great Britain.* In the seventh chapter of this work Dr. Shaw treats of the social activities of British towns. In this he refers to the "remarkable period of awakening and improvement in the British towns" in which we are now living. He calls attention to the fact that the larger British towns have very generally since 1870 obtained control of their water works and are now providing a copious supply of water for their inhabitants. He shows that nearly one-fifth of the aggregate of all local debts, namely $200,000,000, has been incurred in the English and Welsh town for this purpose. Attention is also called to the fact that about the time the cities entered upon the policy of the municipal ownership of water works they began the municipalization of gas works. In some of the cities, particularly the cities of Scotland, "the municipal authorities light the common stairs of tenement houses as well as the regular streets, and it is probably true of Edinburgh, Dundee and Aberdeen, as it certainly is of Glasgow, that the common stairs and courts of tenement houses are lighted at a greater cost for gas and wages than the public streets." The English municipalities have not during the nineteenth century confined their attention to water works and gas works, but at the present time almost all the important street railways in Great Britain are owned and operated by the municipal or other local authorities. Since 1870 further, more money has been expended by British local authorities for improvements that may be grouped under the words harbors, docks, piers, and quays, than for anything else except water works. No British town "which has not provided one or several great and elaborately appointed market houses" is considered progressive. While at the beginning of the nineteenth century "the majority of British industrial towns were practically without any parks, public gardens or recreation grounds whatsoever" and "such a thing as a municipal department for the provision and administration of public playing grounds was almost unheard of," at the present time "an entire change has come about and every town has created a system of parks and gardens." Many towns have public baths and wash houses, while most of the larger towns and many of the smaller ones have made provision for public reference and lending libraries and free reading rooms.

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[1] Orth, "The Decentralization of Administration in Ohio," *Columbia University Series in History, etc.,* Vol. XVI, p. 470.

[2] *Infra,* chaps. XIII and XIV.

Most of this development of distinctively municipal functions has taken place since the year 1870. It will be remembered that the year 1871 was marked by the establishment of the present

Local Government Board, which has a very strong central administrative control over all those functions which the cities are discharging as urban districts. It must, therefore, be said that from the viewpoint of municipal development and local enterprise the adoption of the principles of central administrative control, as they have been applied in England, has not been accompanied by any diminution in municipal public spirit, but has on the contrary been accompanied by a great increase in the development of the sphere of municipal activity.

We have already seen that the theory as to the competence of municipalities in Germany accords them the right to do anything permitted by their resources, which can further the local welfare of their inhabitants.[1] A study of the activities of particular German cities will show that the German city in actual practice goes far towards living up to this theory of the sphere of municipal government. It is of course true that the assumption of a number of functions by German municipalities is facilitated by the general views which are held as to the propriety of governmental action. But whatever may be the effect of such views it is none the less true that the existence of the kind of state control over cities which has been described, that is, the central administrative control, has not had the result of limiting seriously the opportunity for municipal development. What is true of England is just as true of Germany.

Effects on general administrative efficiency. The success of any system of state control over cities may not, however, as has been indicated, be judged entirely by the success which it has had in permitting the development of municipal enterprise. It must be judged also from the viewpoint of the state itself. The endeavor must be made to see whether the interests of the state have in any way been neglected. When we come to consider the subject in this light we find it impossible to make any comparison as to the effectiveness of the state control in the case of any of the countries to which allusion has been made, except England. For in both France and Germany the central administrative control has existed from time immemorial. In England, however, it was introduced, as has been seen, about the fourth decade of the nineteenth century. It was introduced not in the interest of the cities, that is, not in order to further municipal and local enterprise, but to insure that the various local authorities should attend efficiently to those matters in which the central state government had direct interest. The first instance of its introduction was in the Poor Law Amendment Act of 1834, and here central administrative control was adopted in order to do away with the evils which had accompanied the uncontrolled local administration of the poor law. It worked so successfully here that it was later introduced into the public health administration, and with the gradual extension of the functions which are regarded as embraced within the general term of sanitary functions, was finally applied to most matters which are regarded at the present time as municipal in character. We are able, owing to the character of the statistics which have been kept in England, to judge of the effects which the change in the methods of control has had by comparing statistics with regard to specific matters made in years prior to the introduction of this control with those made in recent times.

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[1] *Supra*, p. 111.

Poor law. Harriet Martineau,[1] says of the conditions existing prior to the adoption of the Poor Law Amendment Act of 1834: "The poor rate had become public spoil. The ignorant believed it an inexhaustible fund which belonged to them. To obtain their share the brutal bullied the administrators; . . . the idle folded their arms and waited till they got it; ignorant boys and girls married upon it; poachers, thieves and prostitutes extorted it by intimidation; county justices lavished it for popularity and guardians for convenience. This was the way the fund went; as for whence it arose—it came more and more every year out of the capital of the shopkeeper and the farmer, and the diminishing resources of the country gentleman. The shopkeeper's stock and returns dwindled as the farmer's land deteriorated and the gentleman's expenditures contracted." The same author in writing of the conditions existing after the passage of the Act says,[1] "Before two years were out [that is after 1834] wages were rising and rates were falling in the whole series of country parishes. Farmers were employing more laborers, bullying paupers were transformed into steady workingmen, . . . the rates which had risen nearly a million in their annual amount during the five years before the poor law commission was issued, sank down in the course of five years after it from being upwards of seven millions to very little above four."

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[1] "History of the Peace," Vol. II, p. 324, cited in Maltbie's chapter on the "Effects of the Central Administrative Control in England," in Goodnow, "Municipal Problems," p. 111.

The great progress which these extracts show, was due in large part to the introduction of a central administrative control over the poor law administration. It was maintained, though of course not to the same degree, during the entire course of the nineteenth century. In 1849 the paupers per thousand of the population were 62.7 in number; in 1894 they were 26.5; in 1866 the rate per pound of ratable value for the purpose of supporting the poor was one shilling 5.4 pence; in 1893 it was 11.6 pence.[2]

Public health. Dr. Maltbie in referring to the progress which has been made in the improvement of sanitary conditions cites an article from the *Edinburgh Review*.[3] Here it is said, "Out of fifty towns visited on behalf of the commissioners, the drainage was reported as bad in forty-three, the cleansing in forty-two, the water supply in thirty-two. In Liverpool forty thousand, in Manchester fifteen thousand of the working class lived in cellars, 'dark, damp, dirty and ill-ventilated.' Nottingham contained eleven thousand houses of which eight thousand were built back to back and side by side, so that no ventilation was possible. . . . Even in Birmingham, then as now a model town, the water supply for some of the poorer districts is described as being 'as green as a leek'. The results of this state of things were clearly seen. Whilst the death rate in the country districts was 18.2 per thousand, in towns it was 26.2; in Birmingham and Leeds it was 27.2; in Bristol, 30.9; in Manchester, 33.7; in Liverpool, 34.8. . . . The average age at death in Rutland and Wiltshire was thirty-six and one-half

[1] Ibid., p. 333.

[2] Goodnow, op. cit., p. 115.

[3] Vol. 173, p. 69.

years whilst in Leeds it was twenty-one, in Manchester, twenty, in Liverpool, seventeen.'' These statements are made with regard to investigations which were undertaken, one in 1843, one in 1844 and 1845.

The result of these investigations was the introduction of central administrative control in the administration of public health in 1848. It was not, however, introduced completely until 1871. Dr. Maltbie says,[1] ''If we institute a comparison between present conditions and those of this early period [that is, the period prior to 1848] we shall find a marked contrast and all the evidence points towards more rapid progress since 1871 than before. Considering the death rate, which although it is not an infallible index of sanitary conditions may be taken as fairly accurate standard of comparison when the same country is considered and decennial periods are used, it is found that the average death rate for the eleven years 1838 to 1848 was 22.23 per mille; from 1849 to 1872, 22.34; and from 1873 to 1893, 19.99; being 19.2 for the single year 1893. Or to state it more vividly, if the death rate for 1893 had been the same as that from 1838 to 1848 there would have been upwards of ninety thousand more deaths during that year than there really were. This saving of ninety thousand persons annually has great economic importance, for the direct effect of improved sanitation has been to increase the duration of life, and this increment has come, not to the very old or to the very young, but to the middle aged at the time when personal activity is at or near its height. . . . The decrease [in the death rate] has been greater in urban than in rural districts, in spite of the fact that the former have been increasing in population much more rapidly than the latter, and therefore have been confronted with more difficult problems. The decrease of the death rate in urban districts as compared with rural districts may be due to two causes: one is that the urban districts have more generally undertaken work of sanitary improvement, the other, which may be partially responsible for the former, is that the central administrative control is greater over urban than it is over rural districts.''

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[1] Goodnow, "Municipal Problems," p. 117.

Control over police. About the middle of the nineteenth century the conditions with regard to the police forces of the cities and their activity in preserving the peace were not regarded as satisfactory. The central government, however, did not feel that it was expedient to introduce the same sort of central administrative control over the administration of the police as had been introduced in the case of the administration of the poor law and the public health. The method adopted by the acts passed about the middle of the nineteenth century was for the central government to appropriate a certain amount of money to aid the various localities, particularly the cities, in the support of an efficient police force. This aid was given, however, only on a certificate of efficiency awarded after an inspection by an officer of the central government. The introduction of this central control over the police force was not, however, popular, many localities preferring to maintain their police force in their former condition rather than improve them and receive the state aid. Thus, in 1857 a hundred and twenty localities received no aid. Central control, however, became more popular, for in 1890 there was no borough which did not receive aid. These figures, as Dr. Maltbie points out, are of little value unless it is proven "that the standard of efficiency which a force was obliged to reach to receive the subsidy" was raised. This, however, has been the case, and "no locality was allowed to content itself with past achievements, but was obliged to make further progress or lose the subsidy." While in 1856 there were upon an average 1784 persons to one policeman the number had decreased in 1893 to 971; that is, although the police forces had increased 168% the population had increased but 46%.

Schools. The central administrative control in England has been introduced into the school system and the general financial administration of the municipalities. Dr. Maltbie[1] says with regard to the school administration, "The most significant facts are the great increase in the per capita expenditure for each scholar, the salaries of teachers and the accomodations of schools and average attendance of pupils. One should not fail to observe that the accommodation of day schools has increased at a much more rapid rate than the population, the former rate being over two and one-quarter times the latter, and the average attendance has increased at a still more rapid pace, but is excelled by the increase in the number of teachers. These indeed are important signs, for a progressive educational system should exhibit just such tendencies."

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[1] Ibid., p. 128.

Finances. With regard to the central control over the finances the same writer says,[1] "Nearly every general act fixes a ratio of indebtedness which may be incurred for the purpose enumerated in the act, and this ratio limits not only the local authority but also the amount that the central authority may approve as well. Complete statistics are not to be had, but if one compares the ratable value of all England with the local indebtedness, a wide margin is found between the actual ratio and the statutory limits. Remembering that over one-half is due to local acts, where no approval of the central administrative authority has been required, one is easily convinced of the restrictive tendency of the plan. Statutory limitations have been of little value, and as between the two the central administrative control has exercised by far the greater restraining influence. The custom has been for localities to appeal to Parliament for power to do what they would not be permitted to do by the departments, or what they thought would not be approved should an application be made, with the result . . . that more indebtedness has been incurred under local acts than under sanction of the Local Government Board. The present plan of requiring these acts to be considered and reported upon by some central department is gaining ground, with the result that even the local acts are conforming more and more to the principles laid down by the department as to approval of loans and that they deal more with exceptional instances than with questions plainly within the realm of the central departments. This itself is a result brought about by the Local Government Board and is evidence that the central control is much more effective when exercised by an administrative authority than when exercised by the legislature through the passage of special legislation."

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[1] Ibid., p. 136.

The consideration which has been given to the effects of the introduction of a central administrative control in place of the former legislative control of the state over the cities in England cannot fail to convince us that, considered merely from the viewpoint of the state and its interests, central administrative control is far more effective than legislative control. This is particularly evident in such cases as the borrowing of money where we are able to make a direct comparison of the effects of both methods of control. The tendency of legislatures is to permit localities to incur debts to a greater extent than is proper. When, however, the exercise of the borrowing power is subjected to a central administrative control, where an examination of an impartial character is made of the conditions of the case, it is much more likely that a locality will be prevented from entering into an improvident transaction in borrowing money.

We may say, therefore, that administrative control is far preferable to legislative control over cities, both from the viewpoint of municipal development and from that of the efficient administration by the city of matters affecting the state as a whole.

The reasons why administrative is better than legislative control are easy of perception. The legislature must in the nature of things be a partisan political body. The control which is exercised by the legislature over municipalities is liable on that account to be influenced by partisan political considerations. This has certainly been the case in the United States and as certainly the case in England in the period prior to the passage of the general Municipal Corporations Act of 1835. While legislative control would seem thus inevitably to be exercised more or less because of partisan political considerations, administrative control is not necessarily subjected in the same degree to these influences. Of course in an administrative system in which partisan politics have not been distinguished as clearly as they should be from administration it is true that even the administrative control may in many instances be influenced by improper political considerations. But it is perfectly possible by a proper arrangement of the administrative system considerably to reduce the influence of political considerations. This is quite impossible in the case of a body which is as necessarily political in character as is the legislature.

Another advantage which administrative control possesses over legislative control is that it is exercised ordinarily by a body of a more or less permanent character, which can, if proper appointments are made, be a more or less expert body. In any case its very permanence causes it eventually to possess large expert knowledge.

CHAPTER IX

THE PARTICIPATION OF THE PEOPLE IN CITY GOVERNMENT[1]

Municipal organization determined by state. Prior to the time when the city was subjected to the control of the state the participation which should be accorded the people of the city in the city government and the organization which the city should have were in large measure matters of local determination. The solution which was made of these problems in particular cities was dependent upon the population conditions of those cities. As most city populations have always been commercial or industrial in character, and have always found social coöperation difficult because of the development of classes, oligarchical or despotic government has generally developed of such a character as to place the control of the city in the hands of the more powerful economic classes. In some cases where the commercial or industrial character of the city was most marked, the city organization was almost merged in the general commercial or industrial organization of the community. In these cases the mercantile and craft guilds were so closely connected with the city organization as to be with difficulty distinguishable therefrom.

The result of the local determination of the degree to which the people of the city should participate in city government and of the form to be given to its political organization, has been thus the denial of this right of participation to all but the more powerful economic classes, and the adoption of an organization through which those classes might exploit the city in their own interests.

When the state assumed control of the city in the latter part of the eighteenth century, the tendency of city populations to fall under the dominion of the more powerful economic classes seems to have been borne in mind by those responsible for the new legislation which regulated the relations of cities. Everywhere throughout Europe the determination of the extent to which the people of the city should in the future participate in the city government and of the organization which the city should have was made by the state for the city. With very few exceptions as to unimportant details this is the law at the present day. The most important exceptions are to be found in Prussian cities which by local ordinance may within the limits of the state law fix the property qualifications of voters, and in the cities of the United States which after the Missouri plan may frame their own charters of local government.

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[1] Authorities: Same as for preceding chapter; Oberholtzer, "The Referendum in America"; Merriam, "Direct Primaries"; Eaton, "Government of Municipalities."

The problems of municipal suffrage and municipal organization are by the law of the present day for the most part state rather than city problems in the sense that they are to be solved as a result of state rather than city action. At the same time they must be solved in the light of the conditions which exist in cities. The attempt should be made to solve them in such a way as to permit of the fullest satisfaction of the needs of city populations compatible with the fulfillment of the purposes of the state of which the city is a part. But it must always be remembered that city populations are heterogeneous in character, liable to develop powerful social classes, more disposed than other populations to criminal actions, and, while from a literary point of view better educated than other populations, have an impulsive rather than a reflective temperament. Urban populations being thus different from rural populations, the principles relative to suffrage and governmental organization which are suited to rural conditions may not *à priori* be regarded as suited to urban conditions.

These considerations should be borne in mind when we devote our attention to the first subject relating to city organization, viz., the participation of the people in city government.

The first question under this head is that of municipal suffrage. If we consider this from the standpoint of the relations of the city and the state government we find that two main views have been entertained on the subject, which have profoundly influenced the decision any particular country has made as to the qualifications of voters at city elections.

Municipal suffrage. One of these views is that every person who is by law qualified to participate in state elections should be and is qualified to participate in city elections. Such a view necessarily takes no account of the peculiar characteristics of urban populations, but bases the right to participate in the city government on the theory that general political capacity is sufficient to justify the grant to those supposedly possessing it of the right to vote at city elections. This view of municipal suffrage is generally combined with the view that general political capacity is to be predicated of every male citizen of adult age who has not been deprived of civil rights. In other words, the countries which in their solution of the problem of municipal suffrage make little or no allowance for the peculiar characteristics of urban populations are the countries which have adopted more or less completely the principle of manhood suffrage. These are the states of the United States, France, and Italy. The states of the United States while giving every male citizen of the state resident in the city a vote, deny that vote to those who have an interest in the city, but who do not reside therein. France and Italy, however, give to persons who pay direct taxes in the city, but do not reside therein, the right to vote therein and not elsewhere, provided they choose to do so. Italy and some of the states of the United States also require that all voters shall be able to read and write. Such qualifications have in the United States very little effect in reducing the suffrage below a universal manhood standard.[1] In Italy they exclude a large proportion of the population from the right to vote.

The failure to make any allowance for the peculiar conditions of urban life, which is characteristic of the election laws of the United States, is probably due to the fact that these laws were framed at a time when the cities were comparatively unimportant, and when the country was much less heterogeneous than at present. While this failure to consider the peculiar conditions existing in cities unquestionably makes city government

[1] Hatton, "Digest of City Charters," p. 49.

difficult in the United States, the position assigned to the city in the law is such as to justify, from one point of view at any rate, the attitude which has been taken. For the city, according to the law of the United States, is an important agent of the state government and as such agent acts independently of almost any effective state control. Under these conditions conflicts are apt to arise between the state which adopts a policy and the city which executes that policy, if by any chance that policy is not popular in the city. In such a case a city which has the uncontrolled execution of the state policy may take advantage of its powers of execution, or non-execution—for that is what its powers are where it occupies an independent position in the state government—to neglect or refuse to enforce the state law. If the state whose suffrage is universal adopts a policy, e. g., with regard to city sanitation or the housing of city people based on sanitary considerations, and entrusts the execution of that policy to a city in which the electorate is composed of the landholding classes there is great danger that the state policy will be nullified by local action. Of course the identity of state and city suffrage will not ensure harmonious relations between state and city since the the economic interests of state and city are not always or even usually the same. But where state and city suffrage are the same there is less liability for conflict between state and city than there is where state and city suffrage are different. It is therefore, from this point of view quite right and proper that, in the United States, where cities are important state agents and are not subject to an effective state control, the suffrage for city matters should be the same as for state matters.

Property qualifications. The other view which has influenced the determination of this question of municipal suffrage is that the persons who are qualified to vote at city elections are only those who, regardless of their qualifications of general political capacity, have a stake of a more or less permanent character in the city which their vote affects. The countries which take this view of the matter are also countries which have not adopted universal manhood suffrage for state elections, but adhere more or less completely to the view that property rather than man, or as well as man, is to be represented. They therefore either grant the right to vote only to persons possessing some sort of a property qualification, evidenced by the ownership of property or the payment of taxes, or give to the man who possesses a certain amount of property a vote of greater power than that granted to a man who has less property or no property at all. Countries which belong to this class are Great Britain and Germany.

Period of residence. Both these methods of solving the question are accompanied by a provision of law which requires the possession by the would-be voter of the requisite qualification, in the one case, residence, in the other case, the ownership or occupation of property or the payment of a tax, for a definite period before the vote is cast. The length of this period has an important influence on the number and character of the persons who vote. Thus, in France those persons otherwise qualified, and not qualified by reason of paying taxes in the city, must either have their domicile in the city or have resided therein for a period of six months before the time for making up the election lists. As the municipal elections regularly occur on the first Sunday in May and the lists are completed about February 1st, the actual period of residence is about nine months.

Somewhat the same conditions are found in Italy. Here all qualified voters except those qualifying by reason of paying taxes in the city must have resided in the city a year. The election lists are begun January 1st and completed and published on the 15th of March. The elections take place after the spring session of the city council, but not later than the month of July. The period of residence required of voters not taxpayers is thus actually a very long one, being nearly eighteen months.

In England every male and every unmarried female, a British subject of full age, who on the 15th of July in any year has been during the whole of the last preceding twelve months in occupation, joint or several, of any house or other building in the city, has during the whole of the said twelve months resided in the city or within seven miles thereof, has been rated in respect of the qualifying property to all rates made during those twelve months, and has before July 20th paid all rates levied up to the then last preceding 5th of January, shall be entitled to vote at every municipal election, provided he or she has not within the twelve months preceding received charitable relief. The law is interpreted so as to qualify as voters those who occupy a separate part of the house, even one room, but not those merely living in the house as a part of the family, such as a servant or child of the occupier, and to permit a person, otherwise qualified, to vote where some other person has paid the rates. It is, as a result, a common practice for landlords to pay the rates of the smaller tenants and reimburse themselves by an increase in the rent. Further, the period of residence is actually lengthened by reason of the fact that the election list is not made up until October 1st and the election does not take place until November 1st. The actual period during which the qualification must exist is thus nearly sixteen months.

In Prussia the municipal franchise is granted to all German male citizens twenty-four years of age, householders (i. e., those who occupy a separate room in a house), in possession of civil rights, who during a year have resided in the city, paid all taxes due from them, and have had the necessary property qualification, viz., have owned or occupied a house, or pursued independently a stationary trade, or paid a tax, or had an income of a certain amount. This property qualification varies in different cities. The electoral list is drawn up in July while the election, in the absence of special legal provision to the contrary, takes place in November. The actual period during which the qualifications must exist is thus about fifteen months.

In the United States, however, the period of residence is usually a short one. Thus, in New York, every male citizen twenty-one years of age who has been a citizen for ninety days and an inhabitant of the state one year next preceding the election, and for the last four months a resident of the county, and for the last thirty days a resident of the election district in which he may offer his vote, is entitled to vote in such election district and not elsewhere, for all officers elected by the people and upon all questions which are submitted to the vote of the people. As the date from which the period of residence is counted in the United States is usually the date of the election, the period of residence required by the constitution cannot be extended by adding to it the period intervening between the making of the election list and the date of the election. In some states the period of residence required is even shorter. Thus in Michigan by the constitution in force in 1889 persons otherwise qualified could vote after a residence in the state of three months and in the city of ten days.[1]

It is difficult to ascertain what effect is exerted on the actual number of voters by such provisions as to property qualifications and residence. In England, however, it is said that from 25 to 40% of the adult male population are legally not entitled to vote. The number actually voting is less than the number legally entitled to vote, owing to the fact that the poorer voters do not pay their rates or do not receive credit for so paying them where they are paid by the landlords, and thus do not get their names on the election lists.

If we compare conditions in New York and London we find that the registration list in the former contains about 16% of the population; in the latter, about 12%. The New York registration list would on the London basis have been in 1906 about 480,000 instead of 660,000. In other words, more than 25% of the present voters in New York would be disqualified if the conditions of suffrage in New York were the same as in London. This calculation makes no allowance for the female vote, which is usually about 10% of the male vote.

The classes actually prevented from voting in city elections in England by the conditions of suffrage are the confirmed pauper, semi-criminal and criminal classes, the poorer paid working men in times of industrial depression, sons living with fathers or mothers, who are rate-payers, and a number of the smaller householders. Whatever other persons are excluded, who are probably not many, the most unintelligent portion of those who would vote in this country and the great mass of the purchasable vote are without doubt prevented from voting at city elections in England.

It is stated that the qualification of literacy provided by the

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[1] Attorney General v. Common Council, 78 Mich., 545.

Italian law reduces the number of voters to about one-twelfth of the population.[1] Those who can vote in Italy number then about 8% of the population. If the same proportion of the population were registered in New York as are registered in Italy, the registration in 1906 list would have been about 330,000, instead of 660,000.

In France, however, the number of electors, notwithstanding the long period of residence required, is a large one. Thus there are in Paris with a population of less than three millions, six hundred thousand electors. The large number is probably due to the fact that the registration is official and not personal.

In Prussia, which may be taken as typical of Germany, the method of voting which has been adopted, i. e., what is commonly called the three-class system, as well as the property qualification and the long period of residence, has an important effect on the number and character of the voters. The fundamental idea at the basis of this system is that the voters are divided into three classes, the first class consisting of the persons paying the highest taxes, who pay one-third of the taxes, the second class, of those paying the next highest taxes, who pay another third of the taxes, the third class, of the rest of the voters. If a taxpayer in any class pays more than the average amount of taxes paid by the taxpayers in that class he is to vote with the next higher class. Further any city of over ten thousand inhabitants may by local ordinance provide that the first class shall consist of the taxpayers paying five-twelfths, the second of those paying four-twelfths and the third of those paying three-twelfths of the taxes. Each class elects one-third of the members of the city assembly. This system has two important effects on the voting classes. In the first place, the property qualification excludes a great many persons from the right to vote. The number so excluded varies in different cities because the amount of income which may be taxed, or which will qualify, is determined by each city. The fixing of a low income as a qualification or the subjection of it to a tax will naturally increase the number of those qualified to vote by reason of paying taxes. Indeed, in some cities it is the practice to assume that every otherwise qualified voter pays a tax of at least three marks a year. But a comparison of the number of state voters in Prussia with the voters in cities of between 100,000 and 1,000,000 population shows that there are less than half as many municipal as state voters. In the smaller cities the proportion is somewhat greater. But in all Prussian cities except Berlin there are about five-ninths as many municipal as state voters. The greater number of municipal voters in Berlin, viz., 83% of the state vote, is due to the fact that Berlin requires a very small income, viz., $165.00, (660m), for admission to municipal citizenship. Indeed, in Berlin in 1895, with a population about equal to that of the New York Borough of Manhattan, there were in round numbers 300,000 entitled to vote as against, in round numbers, 325,000 on the Manhattan registration lists.

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[1] Shaw, "Municipal Government in Continental Europe," p. 354.

But the fact that the richest third of the people has, under the three-class system, a voting power equal to that of the poorest third of the voters gives to property a complete control of the elections in Prussia. Thus in Berlin, the Prussian city in which the voters constitute the largest proportion of the population, in 1900 only 1,227 qualified voters were in the first class, 20,821 were in the second class, while 310,471 constituted the third class. Or, to put it in another way, 22,048 voters could elect two-thirds of the members of the council, while 310,471 voters could elect the other third. Finally, in actual practice the two upper classes participate more generally than the third class in the election. Thus 34% of the third class, 50.2% of the first class, and 39.4% of the second class of voters actually voted in 1898. This may be due in some degree to the fact that the vote is an open and not a secret vote.[1]

If we consider the actual participation of the people in municipal elections in the countries whose laws we have examined we find that the United States is the only country which has adopted the plan of giving to every state voter resident in the city, and to him alone, the right to vote at city elections.

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[1] See Brooks, "The Three-Class System in Prussian Cities" in *Municipal Affairs*, Vol. II.

France and Italy, which in principle give the vote at city elections to all state voters resident in the city, extend the right as well to persons who have a stake in the city, though they do not reside therein. The states of the United States further, by the ordinarily short term of residence required for qualification, do not attempt to confine the vote to those state voters who are really permanently identified with the city, as do both France and Italy.

By not providing for either property or educational qualification, and by requiring merely a short term of residence, the United States city election laws thus generally bring it about that the number of voters at city elections is from eight to fifty per cent greater than elsewhere. Finally, the fact that these laws do not accord the vote to non-resident taxpayers prevents the exercise of a possible conservative influence on city elections.

The fundamental differences between the election laws of this country and those of other countries make the problem of American city government quite a different one from what it is in any one of the other countries to which reference has been made.

Although the conditions of population in American cities are such that the voters are much more heterogeneous than they are elsewhere, or even than they once were in the United States, our election laws give no consideration to that fact, but confer the city suffrage on vast numbers of people who cannot be said to have a permanent stake in the city, who indeed, in many cases may not be bona fide residents of the city, and may not have sufficient political capacity, because of lack of the power to read or because of previous associations, to cast a vote intelligently. The whole problem of city suffrage in the United States would seem, if we compare it with conditions in other countries, to have been solved without due consideration of the characteristics of urban population. Indeed the problem received its present solution at a time when urban conditions were quite different from what they are now; and the change which has actually taken place within the last fifty years has, apart from a few of the southern states, had no effect in causing a reconsideration of the determination made so many years ago.

Number of elective officers. The degree in which the people participate in city government is dependent in the second place, on the number of the officers who are elected. In this respect the states of the United States differ from most other countries. In foreign countries the only city officers of any importance who are elected are the members of the council. The sole exception to this rule is that in England the rate-payers elect in addition to the members of the council, two auditors of borough accounts and two revising assessors for elections. All the other city officers in Europe are appointed by the council or by the state government. In most of the cities of the United States, however, the people elect in addition to council members, mayors, school officers, the chief financial officers, and in many cases quite a long list of other less important officers.[1]

The provision for so many elective city officers in the United States is not, it is believed, due to an intelligent or even conscious belief that the elective method is proper for urban conditions, but rather to a general feeling that under all conditions the people may be intrusted with the choice of their officers. In most of the smaller areas of the United States many of the officers were from the beginning chosen by the electors. The abuse of the appointing power, through the exercise of which most of the offices in the national, state and municipal governments were originally filled, caused the conditions of the smaller local areas to be compared to their great advantage with the conditions existing in the state and national governments. The conclusion was reached about the year 1830 in the United States that appointment was not as good a way of filling offices as election by the people. The result was that about the middle of the century the elective principle was generally introduced into our governmental system, in the cities as well as in the open country.

The experience of the people of our cities soon after the elective principle was introduced into the city organization was not a happy one, and led them in many cases to abandon the idea of popular government for cities and to resort to an extreme centralization, in the hope that the state government, under which the municipal government of the larger cities became so generally centralized, might represent a more enlightened opinion than it was believed could be found in the cities themselves. The centralization was in some cases administrative, in other cases it was legislative, but in all cases the city was deprived of many of its rights of local government.

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[1] See list of elective officers in the United States, Hatton, "Digest of City Charters," p. 56.

Believing in the political capacity of the native population, which it was thought was very marked in the rural local areas, and had been amply proven in the success attending the national, and to a less degree, the state government, writers on American city government have commonly accounted for the failure of popular government in the cities by the presence therein of so many voters of foreign birth who had been admitted to participation in municipal affairs before they had familiarized themselves with our ways of thinking and acting, before, in other words, they had become assimilated. This being thought to be the cause of our failure, the municipal population, or at least the most intelligent portion thereof, were willing, as are the people in some of the southern states at the present time, where there is a large ignorant negro population, to surrender their political privileges. They hoped by the surrender to get good government, caring little if only the government proved good, what might be the method by which it was obtained.

The condition of the cities under the elective system was thus worse than under the appointive system. This seems to have been almost inevitable. The cause of the abuse of the appointing power was the necessity of building up the great political parties which sprang up in the United States during the first half of the nineteenth century. The need of maintaining these parties in power was no less after the adoption of the elective system than it had been before. The cause of the trouble not having been removed, the trouble continued, and the parties adapted themselves to the changed conditions and were able through their control over the elections to perpetuate and even aggravate the evils complained of.

The adoption of the elective system not only did not remove the cause of the evils from which the cities had suffered, but also showed that the system was absolutely inapplicable to the large cities. The conditions existing in such large centers are quite different from those which exist in the rural districts where the elective principle had first been tried and where it had undoubtedly been successful, both in producing reasonably efficient administration and in expressing the popular will. In the first place, in the rural districts the feeling of neighborhood is strong, owing to the more permanent character of the population. The people knowing personally most of the candidates who present themselves for office are in a position to make a wise choice. In the cities, on the other hand, the feeling of neighborhood is not strong. It is therefore difficult if not impossible for the people in cities to know much about the merits of any large number of candidates.

In cities, further, offices are much more numerous than they are in the rural districts, and if a great number of offices are to be filled, many of which are subordinate and comparatively unimportant, even the most intelligent elector is apt to become confused and is therefore liable to rely upon the party with which he acts in state or national issues, regardless of the fact that the officer for whom he may be voting has no duties which exercise any important influence on the issues of state and national politics. In this way the control of the party over the city is rather increased than decreased by the adoption of the elective method. The popular control which it is desired to secure by its adoption is made illusory where many officials are to be elected and where the constituency is a large one.

Finally, the administration of a city is more complex than that of a rural district. The presence of a vast number of people in a small section of itself presents problems which require for their solution a large amount of technical knowledge and skill. The rural highway becomes a city street which must not only sustain an immense amount of surface traffic to which the rural highway is not subjected, but must serve as a means of conveying under its surface gas, water, electricity and sewage. The care of the public health in the rural districts is a comparatively simple matter. Unobstructed light and free circulation of air may be trusted to act as preventives of most diseases. In the city, on the other hand, greater care must be taken to prevent the existence of unsanitary conditions, more energetic measures must be taken to stamp out contagious diseases because of their greater liability to spread if once allowed to get a foothold.

Not only do branches of administration for which there is some provision in the rural districts become more complicated in the cities, but also many matters which can in the country be left entirely to private initiative become in the cities the subjects of governmental action. In attending to some of them the highest amount of technical skill is required. In attending to all of them harmony in administrative action and continuity in administrative policy are absolutely indispensable if advantageous results are to be expected. The elective method is not the proper one for securing the necessary technical skill. For evidences of technical skill are not calculated to secure votes. The elective method is not proper to secure the administrative harmony and continuity which it has been said are necessary. For the election of many officers who are not subject to any common control produces an unconcentrated government in which harmony is almost impossible of attainment, while the short terms which are usually connected with elective office make continuity of administrative policy difficult.

The recall. Complementary to the right of electing city officers is the right given by a few city charters in the United States to the people who elect city officers to remove them from office. This right is popularly known as the recall and was first recognized in the present charter of Los Angles. The people who have elected any city officer may, by petition signed by electors equal in number to 25% of the votes cast for all candidates for the office at the last election, ask for such officers's removal. The petition must contain a general statement of the grounds on which the removal is sought. An election must then be held and the person whose removal is sought may be a candidate at such election. The person who receives the highest number of votes is declared to be elected.[1]

Referendum and initiative. The municipal voters may, finally, be called upon not only to act in the case of the election of municipal officers, but also themselves to aid in the determination of the policy of the city by voting directly upon propositions which are laid before them. This method of participating in the city government may be called the referendum. It is in the case of the American town meeting a very old institution. In the town meetings throughout New England the people not only elect the officers of the town but as well determine what amount of money shall, within the limits of the powers granted to the town by the state, be spent for the various branches for town administration. During the course of the nineteenth century the principle of the referendum was extended to cities as well, in a number of special cases. Thus, for example, it is quite common to find a provision in the American state constitutions prohibiting a city from contracting any debt or pledging its faith or loaning its credit except with the approval of the majority of the qualified electors or the tax-payers within the city. In some instances this approval is necessary for the levy of any tax, except for the necessary expenses of the city. In other cases the constitutional provisions are not so far-reaching. "Within certain limits local officers may contract debt at their own pleasure. It is only when these limits are passed that the referendum is employed. Of these various provisions the most usual is that which restricts the local government in the creation of debt in any one year to a sum not exceeding the income and revenue for that year."[1] A similar referendum is often necessary where the municipal authorities desire to acquire or alienate property for the municipality, and to determine the question whether liquor shall be sold within the municipality, or franchises to use the streets shall be granted.

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[1] See Schaffner, "The Recall," Wisconsin Library Commission, Comparative Legislation Bulletin, No. 12.

In other cases, while no provision is made for the referendum in the state constitution, it is the practice of the legislature to submit special acts with regard to towns and cities to the people of the cities. This has been done, for example, quite frequently in Massachusetts.

In the case of the referendum provided for by the constitution of course the question of its constitutionality cannot come up.

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[1] Oberholtzer, "The Referendum in America," p. 282.

In case, however, that it has been provided for by the legislature, this question has frequently been raised. Mr. Oberholtzer[1] says: "In nearly all the states of the Union the courts have considered and discussed this question, and the tendency has been distinctly favorable to this kind of legislation. . . . Unless another tendency should later set in there is then every reason for the belief that supported by the weight of authority of more than a half century the referendum regarding local matters in American communities is now a valid and constitutional part of our system of government in every one of the forty-five states."

The grant of this power of referendum to the people is sometimes accompanied by the grant of the initiative. That is, on the petition of a fixed percentage of the people a given question of public policy must be submitted to them for their action. This is the rule in the cities of Illinois, Nebraska, Oregon and South Dakota, Denver, Los Angeles, Portland and San Francisco. In the last named cities amendments to the city charter may be made in the same way. The referendum and initiative are in some of the most recent American city charters combined with the commission system of city government. This is the case, e. g., with the recent charter adopted by the city of Des Moines, Iowa.

Mr. Oberholtzer says of the referendum, as to financial propositions, that "while the people are, in general, a rather effective restraining influence upon officers who might otherwise incur indebtedness inordinately, they are not a certain safeguard. They have a habit of forgetting one year what loans they have authorized the year before, and are in no sense well fitted to judge when a community's bonded debt is overstepping the limits which prudent financiers would establish for it. A city's population, its resources and its ability to meet its obligations conveniently are not far from fixed quantities. That the people know nothing of all this need not be said. They do not know how much debt has been voted before, what provision has been made for meeting it as it falls due, or how much in safety the district could properly carry. The constitutional convention recognized this fact in a general way when they fixed definite limits to the debt, as for instance, five per cent or seven per cent of the assessed valuation."

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[1] Ibid., p. 321.

"When the voters of a city are asked to assent to a loan of one or five or twelve million dollars they in the first place consider how it is to be expended, as for instance, for free libraries, new streets, or an improved water supply. If they individually feel the need of these improvements and have reason to think that their lot will be made more happy thereby, they are very likely to vote for the loan. Often no considerations as good as these are at hand. At a recent election on the question of borrowing a large sum of money in Philadelphia, to be applied to improvements in different parts of the city, purely local and selfish considerations made themselves felt. Those parts of the city which were to be directly benefitted by the loan returned large majorities for it, while in other sections it was viewed with curious indifference. Not a few electors who upon being asked how they had voted on the proposition explained in all seriousness that they had cast their ballots in favor of the bill because they believed it would put more money in circulation and give the poor a chance to secure some of it. The professional politicians are usually to be found on the side of a loan bill, for they know that whenever a large sum of money is to be paid out by the city, for no matter what purpose, there will be opportunities for them and their friends to enrich themselves at the public expense."[1] Mr. Oberholtzer thinks, however, that the voter "as a rule approaches a proposition to increase the tax rate in a very different frame of mind. It is of course true that every loan means a heavier burden of taxation, if not at once, at some future time. The postponement of the evil day is, however, very seductive to the tax-payer; he will look on indifferently while bonds are issued in large sums, but it is another matter altogether when a direct proposal is made to him for an increase of the tax rate, say from one dollar to one dollar twenty-five on each hundred dollars of the assessed value of his property. No matter how good the purpose for which the additional revenues are needed, tax-payers will vigorously resist this open attempt to induce them to make over a larger portion of their substance to the state."[1]

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[1] Ibid., p. 281.

The only other countries having an important municipal development which make provision in their legislation for anything in the nature of a referendum are England and Italy. In the former it is provided that no expense in promoting or opposing a bill in Parliament shall be incurred unless such promotion shall have the consent of the owners and rate-payers of the city. This consent is to be given at a meeting of such owners and rate-payers, summoned by the mayor, unless a demand is made at such a meeting by any owner or rate-payer that a poll shall be taken, when such consent shall be given at a poll taken at a special election held for the purpose. This provision is not apparently a very important one and resort is seldom had to it, except where a city desires to obtain special legislative authorization to take over some public utility. In Italy by a law of 1903 no city may enter upon the field of municipal ownership and operation except after the policy has been approved by the voters of the city.

The only country, then, having an important urban development in which the referendum or initiative has any great importance is the United States. The reasons for its adoption would seem to be two in number. The first is the democratic idea that everything possible should be decided by direct appeal to the people which underlay the town meeting of New England. But the success which it unquestionably had in the towns of New England is not an argument of great value in favor of its adoption in the much more complex conditions of the modern American city. Like the elective principle which is also characteristic of the New England town, it was adopted in the place of its origin for districts whose population was most homogeneous and whose needs were quite simple. Because it worked successfully in those conditions, we may not predict that it will work successfully in the totally different conditions which characterize urban populations.

Indeed, in the early history of the United States no attempt was made to adopt the referendum in urban conditions except in so far as the town meeting was retained for places which, like Boston in the early part of the nineteenth century, had become from the social point of view urban communities without becoming cities from the legal point of view. And even here it was abandoned when people became conscious of the change in social conditions. For Boston in the early part of the last century abandoned the town form of organization with its democratic town meeting and became a city with a representative city council.

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[1] Ibid., p. 282. See also articles in Vol. IV of the "Proceedings of the American Political Science Association," pp. 165, 193, and 198,

The attempt to reintroduce the referendum in the United States has been in all probability due also in large measure to the failure of the city council to which reference will be made later.

In none of the countries in which the city council is a reasonably satisfactory body has any attempt been made to make large use of the referendum. The only exception to this statement is Switzerland, where urban development has not been marked.

Methods of nomination. The purpose of giving to the people of cities the right to elect their own officers and determine the policy of the city is to secure the determination of questions involving the welfare of the city in accordance with the interests of the city. Our study of municipal development has shown us that the tendency everywhere is for the interests of the city to be sacrificed for the welfare of the state as a whole. This was true in the later Roman period, where the whole city organization was framed with the object of securing an efficient and easy collection of the general state taxes. This was true in France, where the city was reduced to a position of subordination to the central government of the kingdom in order to make it easier to secure general governmental efficiency. In England also the cities were sacrificed in order that the Crown and afterwards the political parties might more easily secure a majority in the House of Commons. Finally, in the United States the city has from the beginning almost, been regarded as a mere pawn in the great game of national and state politics. Mr. Dorman B. Eaton says,[1] in referring to the election of municipal officers,

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[1] "The Government of Municipalities," p. 210.

"there is no just basis for allowing parties to control their nominations, but a manifest need of enabling all citizens to freely exercise their influence both as to nominations and elections, irrespective of party relations and interests. We have allowed the development of so haughty a despotism on the part of parties that their majorities now claim a right to dictate all the nominations and, very largely, the votes of their adherents."

The problem of protecting the city against the state and national parties is one, however, which at the present time would seem to have any great importance only in the United States. We find little complaint elsewhere about the interference of political parties in city affairs. This is due partly to the position which the city occupies in the general state government and partly to the fact that state parties are nowhere so strong as in the United States.

It would appear therefore to be probable that no remedy for the present situation will be found in the United States so long as the city occupies the position which it has at present. Until the city has been subjected to an effective state control, where it acts as the agent of the state, and the temptations for the political parties to interfere in city affairs are diminished, through the diminution of the legislative control over cities, and the adoption of the merit system of appointments by a reform of the civil service, it is questionable whether any attempt at regulating the action of parties will be as effective as is expected. At the same time attempts are being made to differentiate city from state politics, and through the regulation of the processes of nominating party candidates for office, to give to the municipal voters a greater independence in municipal elections than they now possess.

Nomination by petition. One of the methods that has been proposed, though it has not as yet been adopted in many of the states of the United States, is nomination for city offices by petition. Mr. Eaton in his *Government of Municipalities* pleads for the adoption of this plan. The method of nomination by petition originated in Australia and came to be known in this country mainly as a result of being incorporated into the English Ballot Act of 1872. This Act, which was afterwards applied to city as well as Parliamentary elections, provided in no way for the recognition of parties. Nominations were to be made by two proposers and approved by at least eight voters of the district for which the election was to be held. When the question of the adoption of an official ballot, to be distributed by state officers at state expense along the lines laid down in the English Ballot Act, arose in the United States the demand was made that English methods be considerably modified. They were modified in the first place by giving the party legal recognition. A party was recognized as an organization which had cast a certain percentage of the vote at the last election. The convention of the party making the nomination was to certify its nomination to the state ballot officers and the candidates of each party were placed on the ballot in one column. This party column ballot, as it was called, indicated to the voter the party to which the candidates belonged, since at the head of the column was either the name of the party or a party emblem.

Provision was made, finally, in the American ballot acts for nominations not made by any one of the regular parties. These nominations were to be made by means of a petition which was to be signed by a number of persons varying with the territorial extent of the district for the office of which the nomination was made. The number of signatures to the petition necessary to make one of these independent nominations was as a general thing made very much greater than was the case under the English Ballot Act of 1872. A large number of signatures was believed to be necessary because under the American ballot acts, the state was to pay the expense of the ballot which in England was defrayed by the candidates. It was believed that it would not be proper in this country to impose the cost of the ballots on the candidates, and the number of signatures required was made large in order to prevent inconsiderate nominations.

Those who demand nomination by petition would eliminate party convention nominations, would reduce the number of signatures to the nomination petition, and would arrange the candidates in alphabetical or some other order under the office for which they were nominated and not under the party column.

It is, however, very doubtful whether in the conditions existing in the United States this method would be satisfactory. Attention has already been called to the great number of offices in American cities filled by election. It is very doubtful if in the cities, which have been shown to have a much larger voting population than is to be found in England, the ordinary voter can intelligently choose all the officers he is required under the present law to vote for except with the aid of the party. Furthermore, it is desirable that officers elected at a given election should have so far as possible the same purposes in view. They should therefore ordinarily be members of the same party, not necessarily a state party, but a city party if that is ever developed. This result can practically only be secured through a party column ballot.

Nomination by petition would therefore seem to be inapplicable to American conditions so long as we have a very large electorate and a very large number of offices to be filled. If the relation between the cities and the state were arranged so as to subject the city to an effective state control and if the number of elective officers were reduced and a longer period of residence required of the voter, it is probable that the English system of nomination by petition might be adopted in the United States with beneficial results.

Direct nomination. Another method of regulating municipal elections, is that which is known as direct nomination. By the system of direct nomination the attempt is made to dispense entirely with the party convention and to permit the members of a party to nominate directly. This system has been adopted in one form or another in a large number of the states. In a general way, it provides for nominations by political parties which are recognized, as in the ballot acts, as organizations which have cast a certain vote at the last election. Provision is made for registration of the voters of a party, who are in some cases given the right to affiliate themselves with any political party regardless of their conduct in the past. In other cases the attempt is made to define membership in a political party by reference to the past conduct of the voter. Upon the registration thus formed a primary election is held. The ballots are in some instances paid for by the state, in others, by the candidates for the party nomination. By some laws a man's name must be proposed by a certain number of voters in order that he may be a candidate for office. In others anyone may propose himself as a candidate who is eligible to the office in question. The vote is usually a secret one similar to the vote at public election, and the candidates at the primary election receiving either the highest number of votes, or a number of votes which is both the highest and exceeds a certain percentage of the votes cast, are declared to be the candidates of the respective parties and are placed upon the official ballot at the public elections.

One of the defects of this system of direct nominations is that the votes at the primary are frequently so scattered as to cause the nomination of a candidate who has only a comparatively small minority of the votes cast. Again, where the law provides for placing on the primary election ballot the names of the candidates for nomination in alphabetical order a man whose name begins with a letter in the first part of the alphabet would appear to have a much better chance of success than one whose name appears at the end. Attempts are being made to remedy both these defects. It is proposed to provide that the voter shall indicate both his first and his second choice and, in case no one has a majority of the first choice votes, to give weight to second choice votes. In order to take away from persons whose names begin with a letter in the first part of the alphabet the unfair advantage which they thus secure it has been proposed that the names of candidates shall be placed on the ballot either in the order in which they have been filed, or as a result of a drawing of lots, or to change the order of the names on the ballots, placing thus A's name first on the first hundred, B's name first on the next hundred and so on.

Professor Merriam says of the direct primary: "So far as its tendencies have been made evident, the direct primary has justified neither the lamentations of its enemies nor the prophesies of its friends. It has not 'destroyed the party;' nor has it 'smashed the ring.' It has not resulted in racial and geographical discriminations nor has it automatically produced the ideal candidate. Some 'bosses' are wondering why they feared the law;

and some 'reformers' are wondering why they favored it."[1]

Regulation of parties. The third method which has been devised for diminishing the influence which state and national parties exert on the selection of city officers is the regulation of party nomination operations by act of the legislature and their subjection to the control of the courts. This is the method which has been adopted in the states of New York and Massachusetts. The law provides for the registration of the voters of the party and in New York makes a distinction between city and state elections by declaring expressly that no one loses his right to act with his party by reason of any conduct on his part in connection with a city election. Primary elections are held usually for all parties on the same day under the supervision of state officers and in much the same manner as ordinary elections. The New York law provides that direct nominations may be adopted by any county committee for elections in that county. In the absence of such provision the convention is retained and a primary election is held merely for the election of party officers and delegates to party conventions. All of the operations of this primary election together with those of most of the conventions are subject to the control of the courts in much the same way as are the state elections.

It is difficult to say exactly what effect such laws have had. It is believed by most party politicians that the control of the officers who hold these primary elections is a very important factor in the success of any particular faction of the party. At the same time it would appear to be the case that much greater satisfaction is exhibited by voters in general with the actions of the party than was the case prior to the adoption of the law. The effect on municipal elections in the state of New York is generally believed to be good since it has been easier for the independent voter to free himself from the domination of the state party in municipal elections than was the case before the passage of the act.

City parties. It is very doubtful whether it is possible by means of any scheme based upon law alone to secure to the independent voter at municipal elections the control of city affairs. The only thing that can be done is to make it easier for him to free himself from the domination of the political party. The desired end of securing the management of city affairs apart from considerations of national and state politics can be secured therefore only through the voluntary coöperation of the members of the political parties irrespective of any methods which would be provided by the action of the legislature.

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[1] "Primary Elections," p. 131.

Fusion in New York city. There are two methods of such coöperation to which it is desirable to call attention. One of these has received possibly its highest development in the City of New York. About twenty years ago a large number of voters became convinced that it was impossible under the conditions which existed in the city to secure good city government through the agency of either one of the great national and state political parties. The attempt was then made to form a new political organization not connected with either of the parties, which should enter the field of politics only on the occasion of municipal elections. The first attempt that was made in this direction was unsuccessful. Subsequent to the defeat of this municipal party the constitution of the State of New York was so changed as to separate municipal from state elections. Immediately after this change was made it was attempted to unite the elements opposed to the dominant political party in the city. This attempt was successful and the government presided over by Mayor Strong was inducted into office. The coalition which secured the election of Mayor Strong was, however, multi-partisan rather than non-partisan. In the election of 1897 the attempt was again made to organize a political party for the city which from the point of view of national and state politics was distinctly non-partisan. This attempt was a failure. Since that time the Citizen's Union, as the new political organization was called, has remained in existence. Recognizing the mistake made in 1897 it endeavored in its later political activity to unite with the minority state political party in the city. It was successful in 1901 but lost the election in 1903.

Chicago municipal voters league. In Chicago things have taken a somewhat different course.[1] The instrument adopted in Chicago was a Municipal Voters League, which was organized in the year 1896. "It avowed its purpose to secure the election of 'aggressively honest men' to the council, and employed surprisingly simple methods to effect this aim. Eight municipal campaigns have been fought since it became a factor. The once powerful ring has been completely overthrown, but eight of its fifty-three members remaining in the council, and they are wholly discredited and without influence. In its place there is a council of an unusually high average in character and intelligence, fifty-three of whose seventy members can fairly be relied on to be faithful to the people they represent. Each year the standard is being raised. To become an alderman is an honorable ambition and young men of education and ability are aspirants for the position. A very remarkable fact is that in the organization of the council committees party affiliations have no place. This regeneration is by no means the full measure of the results achieved in these campaigns. The interest of the people in the welfare of the city has been greatly stimulated, with the necessary consequence in a large increase of the independent vote at municipal elections."[2]

The methods of the Municipal Voters League are quite different from those of the Citizens Union in New York. "When the nominations [of the regular parties] have been made, there is submitted to each candidate who is not considered hopelessly bad the League platform. This is a pledge, not to the League but to the people. . . . The candidate may sign, modify or refuse to sign the platform without thereby securing either the League's support or its condemnation. The people are informed of his action in regard to it by reports."[3] In addition to informing the people as to the position which each candidate takes the League takes an active part in the campaign, supporting those candidates whom it approves and endeavoring to defeat those candidates whom it disapproves. The success of the League work is attributed "to the sincere desire of a large portion of the community for better government. Given the facts the average citizen prefers to vote for a fit man rather than for a bad or an unfit one. The League furnishes the facts unbiased by partisanship or personal feeling and unaffected by libel suits or threats. The people of Chicago have confidence in it and accept its judgment."[1]

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[1] See an article by Frank H. Scott entitled "The Municipal Situation in Chicago," issued in the "Proceedings of the Detroit Conference for Good City Government," p. 140.

[2] Ibid., p. 148.

[3] Ibid., p. 153.

The New York and Chicago methods of securing irrespective of legislation a non-partisan city government have this in comman: neither the Citizens Union of New York nor the Municipal Voters League of Chicago busies itself with anything except what it regards as city elections. This attempt to separate national and state from city politics is characteristic of the majority of the methods adopted in this country for the betterment of city government.[2] It is seldom, however, that the attempt has been made to form a political organization separate from the national and state parties by means of which the result desired is to be sought. The most ambitious attempt of this sort was that made by the Citizens' Union of New York, but even this organization has found by experience that its best chances of success are to be expected when it acts in alliance with other political organizations, even where those other organizations are parts of the national and state party.

We may therefore conclude that at present the time is not ripe for the formation of a city party which shall attempt to play a lone hand in the game of city politics. Whether the time will ever be ripe for such action may be doubted. A distinctively city political party would appear to be within the realm of practical politics only where conditions are very different from those that exist in the United States. Even in England where the city is subjected to a rather effective state control, where special legislation is comparatively rare, where the spoils system of appointment to municipal office has not been adopted, and where the only elective officer of any importance is the council member, municipal elections are conducted in large degree upon party lines, although after the election the persons elected to office are able to transact the city business on its merits without regard to the conditions of imperial politics.

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[1] Ibid., p. 156.

[2] See Tolman, "Municipal Reform Movements," where the purposes and methods of a large number of organizations are described.

CHAPTER X

THE CITY COUNCIL[1]

Original municipal organization. A study of the history of municipal development shows that the important elements in the organization provided for cities have been those to be found in most governmental organizations, viz., a council or assembly and one or more magistrates. The Roman city had its *curia* and its *duumvirs,* the later Italian city, its *consiglio* and its consuls, the German city, its assembly and council of magistrates with the Burgomaster at its head, and the Anglo-American city, its council and mayor. Although this form of organization was developed as a result mainly of local action during the period when cities were striving to realize the dream of a city-state, the governments of the various states of which cities became subordinate parts, did not seriously depart from this general plan when they assumed the function theretofore discharged by the cities themselves of determining the character of municipal organization.

Both the French law of 1800 and the Prussian law of 1808 made provision for a council and magistrates, i.e., the mayor and deputies, and the Burgomaster and the members of the *Magistrat,* while the English law of 1835 recognized in addition to the council a mayor who, though a member of that body, was in some respects distinguished from its other members. The English mayor did not, however, occupy so important a position as that accorded to the city executive by either the French or the German law. Indeed, almost all important functions of city government were vested in the council, as had been the case in most of the special city charters which were replaced by the Municipal Corporations Act of 1835. While the continental practice recognized the executive authorities of the city government as occupying an important position, it did not, however, and does not now, as will be shown, make a clear cut separation between them and the council.

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[1] Authorities: Durand, "The Finances of New York City"; "Council v. Mayor" in Pol. Sci. Qu. XV, p. 246; Eaton, "Government of Municipalities"; Fairlie, "Essays in Municipal Administration"; Munro, "The Government of European Municipalities"; Deming, "Government of American Cities"; Orlando, "Principii, di Diritto Amministrativo"; Morgand, "La loi municipale."

The council system. The English system of city government, which may be called council government, was adopted in the charters granted in the colonial days to cities in the United States. It is true that the first charter of New York distinguished the mayor, who was appointed by the governor of the province, from the council, whose members were elected by the city electors. But the administrative powers of the mayor differed little from those possessed by the elected members of the council. Very early, however, in the history of municipal development in the United States there was a tendency to differentiate the mayor from the council. The mayor, who as early as 1822 became elective by the people, obtained a power, similar to that possessed by the President of the United States and the governors of the states, to veto council resolutions. Later, executive departments similar to the departments of the national government were organized, the heads of which, again like those of the national government, were to be appointed by the mayor, by and with the advice and consent of the council. By about the middle of the nineteenth century the American city had an organization which resembled very closely the general plan of organization adopted for the national government. This resemblance was too close to be altogether accidental. The student of the historical development of municipal organization in the United States can hardly fail to come to the conclusion that those responsible for municipal organization in the first half of the nineteenth century consciously and purposely adopted the form of government provided by the United States constitution as a model, believing that it offered an ideal not only for national but as well for urban government.

Experience, however, soon demonstrated that this was a mistaken view. Hardly was this supposedly ideal form of government adopted than changes began to be made in it. These changes were unquestionably made in many instances for partisan political reasons. At the same time it cannot be denied that the condition of American city government in the middle of the nineteenth century was not satisfactory. Whether the cause of the trouble was the unsuitability of the form of government to city conditions or the sacrifice of municipal interests to the exigencies of national and state politics, to which allusion has been made, it is difficult to say. But whatever was the cause it is certainly true that there was great dissatisfaction with the conditions of city government. The changes which were subsequently made in city organization all had for their effect to diminish the powers of the council. This body seems to have been the authority in the city government in which the people had the least confidence. A second effect which these changes had was to carry further the disintegration of the city government, the first step in which had been taken when the mayor had been separated from and been made independent of the council. A third effect of these changes was to take from the city and bestow upon the state the management of certain affairs, which had up to the middle of the nineteenth century been recognized as municipal rather than state affairs.

The board system. Many of the heads of the city executive departments then in existence were made elective by the city voters. In other cases they were to be appointed by the governor of the state. This was particularly true of the police department. In many cases the authorities, whether appointed by the mayor and council, elected by the people, or appointed by the governor of the state, were organized as boards in such a way that the term of one member would expire every year or two years. It was hoped that a board would be taken out of the realm of active politics and having in its collective capacity more or less continuity would be able to pursue a more permanent policy than had been possible under the old form of organization. Later, appointment by the state governor and election by the city voters became less common methods of filling the position of head of a city department and were replaced by appointment by the mayor and council. It would, however, be difficult to select a city charter in the United States where some city office besides that of the mayor and members of the city council is not filled either by popular election or by appointment by the state governor.

But notwithstanding this change in the method of filling city offices the system of city government existing in the United States about 1860 was characterized by the presence of independent boards or officers holding for fixed terms generally longer than that of the mayor who appointed them and removable from office only with extreme difficulty. This system has been called the "board system" of city government. It remained in existence up to about 1880. No more typical example of it can be found than is presented by the former charter of New York adopted in 1873. Under the board system the government of the city was completely disintegrated. For the various boards and city officers acted in most respects independently of both the mayor and the council. No one mayor appointed them all. All that one mayor could do was to fill vacancies as they occurred. The lack of responsibility and harmony in city administration led later to giving the mayor large powers of appointment and removal. This movement began about 1880. The system of city government in accordance with which the mayor had these powers has been called the "mayor" system. A good example of it is found in the charter of New York adopted in 1901.

Loss of self-government. Under both the board and mayor systems of city government the council sank into a position of insignificance. It was denied participation in administration, since all administrative powers were assumed by the mayor and the heads of the executive departments. Its powers of legislation were often assumed by the legislature of the state, which determined the municipal policy by the passage of special acts. Just prior to 1897, the year of the adoption of the Greater New York charter, all important questions relative to New York City government were thus determined by the state legislature. The city had lost practically all legislative power, that is, the power of formulating the municipal policy. When, for example, it was desired to inaugurate a system of under-ground rapid transit it was found that the powers of the city authorities were insufficient for the purpose. Application had to be made to the legislature of the state, which enacted a very detailed law upon the subject, providing for the carrying on of the work by a commission not connected with the municipal authorities. Again, when the city desired to enter into the policy of municipal ownership of the water front it was found to be impossible to do so without legislative action. Finally, when it was desired to increase the school facilities of the city by the erection of a large number of new school houses, it was necessary to appeal to the legislature in order to get the authority to issue the necessary bonds.

Revival of council idea. The Greater New York Charter of 1897 marked a change in the policy which had been followed for more than fifty years. In the report of the Greater New York Charter Commission it was said, "When the Commission came to consider the legislative department for the greater city diverse and conflicting views and plans were urged for adoption. The general judgment was that a municipal legislative assembly was not only necessary but indispensable. But as to the constitution, size and powers of such an assembly conflicting views were also presented and urged. . . . The Commission has, however, converted the present Board of Aldermen into a municipal assembly consisting of two houses. . . . The charter has been constructed upon the principle that it is expedient to give to the city all the power necessary to conduct its own affairs. The Commission has accordingly conferred upon the municipal assembly legislative authority over all the usual subjects of municipal jurisdiction. The extent and variety of its powers, as well as its size, mark the Commission's sense of its dignity and importance. With a view to self-development the Commission has entrusted the new city with" very large powers, which are enumerated in the report. "The city, as the Commission has constituted it, has within itself all the elements and powers of normal growth and development, making it unnecessary to have habitual recourse as hitherto to the legislature of the state for additional powers—a serious evil and in the past the source of much abuse. These powers—great, varied, and even complex as they necessarily are—will, when scrutinized, be seen to be no greater than the City requires and to be always legislative in character; they are such as the municipalities of England and of Europe as well as of this country constantly exercise. . . . But while the charter thus confers upon the municipal assembly powers adequate to the present wants and the future development of the City, it interposes in accordance with established American polity a variety of checks and safeguards against their abuse similar in their nature and purpose to the constitutional limitations upon the congress of the United States and the legislatures of the several states." Indeed, so many checks were thrown about the action of the municipal assembly that the exercise by the municipal authorities of the wider powers granted by the charter of 1897 was made exceedingly difficult. When this fact is borne in mind it will at once be understood why the people, both private citizens and city officials who desired something done, found it easier even under the charter of 1897, to apply to the state legislature, as they had applied in the past, than to worry through the various authorities which by the charter of 1897 had the power of decision.

The grant of local power made by the charter of 1897 did not thus result in making the determination of municipal policy a local matter. The charter of 1897 was revised in 1901. The commission appointed to make this revision said in its report (page 4), "In considering the question of the legislative powers to be conferred upon the City of New York, we have been met in the first instance by the question whether any city legislature should exist at all. It has been contended that the affairs of the city are entirely or almost entirely of a business nature, and that no city legislature is really necessary except for the adoption of what may commonly be called administrative rules and regulations. In this view the Commission is unable to concur. There will be many questions relating to the development and internal administration of the city which must be the constant subject of legislation as the City grows and as new and unforeseen conditions arise. Unless a city legislative body exists there must be constant legislation by the state as to the affairs of the city, and the embarrassment arising therefrom in municipal administration is generally acknowledged. The Commission in passing upon the question of the legislative powers of the City has substantially adopted the views which are well expressed in the report of the Commission which framed the present Greater New York Charter."

The charter which was adopted in 1901 for the City of New York differed from the charter of 1897, in that it removed certain of the checks which had been imposed upon the action of the municipal assembly, and in that it made it easier for this body to act by reducing the number of houses of which it was composed from two to one. The draft as originally proposed by the Charter Revision Commission, increased considerably the ordinance power of the board of aldermen, but the legislature did not approve of this proposition and reduced the powers of the board of aldermen in this respect almost to what they were before. The charter for New York drafted in 1909 also proposed to establish a local legislative body, but its powers are so small that it will not probably, if the charter is adopted, realize the wishes of the Commission.

It will be seen from what has been said that in the last few years there has been a tendency in the United States to restore to the council of the city, in which it had lost most in importance, many of the powers of which it had been shorn in the latter half of the nineteenth century. This tendency is in accord with the ideas of the theoretical writers on municipal government. Bryce, in his *American Commonwealth*, was perhaps the first to question the wisdom of the movement towards the destruction of the council. Dr. Shaw's books on Municipal Government in Great Britain and Continental Europe, took even more positive ground. Since the publication of these works most of the books which have appeared upon the question have acknowledged that a city council is absolutely necessary. One of the most urgent pleas for its retention and for the increase of its powers is the late Mr. Dorman B. Eaton's *Government of Municipalities.*

Few of the theoretical writers on the subject have gone so far as to advocate the restoration of the council to the position which it occupied in the United States prior to 1830 when it absolutely controlled the city government. A marked exception to this rule is Dr. Durand, the author of the *Finances of New York City*. Dr. Durand in two articles published in the Political Science Quarterly, September and December, 1900, entitled, "Council versus Mayor," advocates the entire rehabilitation of the city council and the adoption of what has come to be known as the English system of municipal government.

Arguments for council idea. Council representative. It may therefore be said that the question of the position of the council in the city government of the United States has ceased to be merely an academic question and has become one of real practical importance. It will be well, therefore, to consider the main arguments which have been advanced in favor of the council by the adherents of council government, if we may include within that term all those who favor an increase of its powers.

The first argument to be noticed is the one which is the basis of the thesis of Dr. Durand. His argument is an attack on the principle of separation of powers as applied to all forms of government, and particularly on the applicability of the principle to municipal government. This argument, as Dr. Durand is quite aware, may be used as well in favor of the increase of the power of the mayor and executive departments as in favor of the rehabilitation of the council. Dr. Durand therefore attempts to show that a single individual, even had he the necessary time, is not as well fitted as a body for the exercise of deliberative authority whether in the nation, the state or the city; that a similar line of reasoning goes to show that the action of a body is more likely to be honest and upright than that of an individual; that another important consideration in favor of entrusting discretionary authority to a body rather than an individual is that thereby greater continuity is secured; and that, finally, a body is to be preferred to a single individual because it is more apt truly to represent the people.[1]

Municipal home rule. The second argument which has been advanced in favor of the rehabilitation of the council is that its existence is necessary in order that a reasonable municipal home rule may be secured. There are many powers connected both with the determination of municipal policy and the carrying out continuously of that policy when once determined upon, which are of a legislative character, which, in other words, resemble powers that through the entire American system of government are entrusted to a deliberative body. So long as modern American ideas of government are held these powers will never be entrusted to administrative officers or boards consisting of merely a few individuals who do not owe their election to the people, who are, in other words, not representative of the municipalities. If the municipal council is destroyed or what is practically the same thing, shorn of its powers, such powers will not be conferred upon administrative officers or boards but will be exercised by the legislature of the state, which is generally regarded as more representative in character than these boards or officers ever can be. The destruction of the municipal council means therefore, not the destruction of the council or representative idea of government, but merely the transfer of local legislative powers to a central legislative body. The more important the city council, the less important is, as a matter of fact, the position of the legislature as the organ which is to determine the policy of the municipality. This seems to have been the argument which appealed to the commissions of 1897 and 1900, the one for the preparation, the other for the revision of the charter of Greater New York.

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[1] *Political Science Quarterly*, December, 1900, p. 692, et seq.

Exclusion of politics. The third argument which is advanced in favor of the council is to the effect that only where it exists is it possible to keep politics out of the city administration. This argument has taken two somewhat different forms. The first is one upon which Mr. Eaton lays great emphasis. His contention is that a council may be a non-partisan body; a mayor never can be. He says,[1] "Save in very rare cases of a non-partisan uprising and union for municipal reform a mayor will be not the representative of the city or its people as a whole, but only of some party majority. Such an election would increase party power and would tend to perpetuate city party domination. . . . It is plain that a true council is in its nature a non-partisan body, because one in which . . . all parties, interests and sentiments of importance will be represented. To increase the authority of the mayor is therefore to increase the power of party in the city government, while to increase the authority of the council is to augment the influence of the non-partisan and independent elements among the people. The issue between predominating powers in the mayor and predominating powers in the council is consequently but another form of the issue between party government and non-partisan government in cities—between government by party opinions through partisan officers, and government by public opinion through non-partisan officers."

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[1] "The Government of Municipalities," p. 252.

The other form which this argument takes is that the existence of the council is necessary if we desire in our municipal administration to distinguish politics, that is the function of determining policy, from administration, that is the function of carrying out a policy once determined upon.[1] If these functions are not clearly distinguished it is difficult if not impossible to prevent politics from affecting administration, not only in its action but also in its organization, with the result that qualifications for even clerical and technical positions in the public service soon become political in character. While it is necessary in all governmental organizations to separate politics from administration it is particularly necessary in the case of municipal government on account of the technical character of a large part of municipal administration. Positions in many branches of municipal activity must be filled by men with large technical knowledge if the work of the city is to be carried on advantageously, and our past experience not only with regard to municipal administration but also with regard to the national and state administrations proves that if politics are allowed influence in the appointment to such technical positions, they are not filled by competent men.

Under the former charters of New York and Brooklyn which had reduced the council to a position of unimportance the mayor and executive officers acting either separately or together exercised almost all municipal powers, both legislative and administrative, not assumed by the legislature of the state. The heads of departments in these cities ceased altogether to be permanent in tenure, and it was considered almost as a matter of political principle that each incoming mayor should appoint new incumbents. Indeed, the charters of both cities made a special point of permitting each mayor to secure heads of departments who would represent the issues on which he himself was elected and stood, although he was given no continuing power of removal.

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[1] See Goodnow, "Municipal Problems," p. 221, et seq.

This destruction of permanence in office seemed to be necessary in order to make such a system of municipal government popular in character, but popular government was thus secured at the expense of the highest administrative efficiency. What was really done by such an arrangement was to create a municipal council in a new form, which did not, it is true, possess all of the powers of the original council, but which did actually determine what should be the policy of the city so far as that was a matter for local determination. The great defect of such an arrangement was that officers who should be administrative became political in character.

It is thus seen that both practical men and theorists in the United States are tending towards a partial rehabilitation of the municipal council. American experience would seem to be in accord with European, so far as concerns the propriety of the existence of the council as an important factor in the municipal organization. For, as we shall see, European cities accord to the council a position of great importance.

The "commission" system. While theoretical writers have been discussing the expediency of the existence of the city council and charter makers have been trying to rehabilitate it a movement has been started in the United States which has gained considerable headway and which proposes to substitute for the city council a "commission." This system of city organization originated in Galveston, Texas, after the great inundation of 1900. The Galveston charter as at present framed "provides for the popular election every two years of five commissioners, one of whom is given the title of mayor-president. They are elected at large. The mayor-president is presiding officer of the Commission, but otherwise has no special powers. By a majority vote of the five commissioners all municipal ordinances are passed and all appropriations are voted, the mayor-president having no veto, either absolute or qualified. The commissioners likewise by majority vote apportion among themselves the headships of the four main departments of civic administration, namely, finance and revenue, water-works and sewerage, police and fire protection, and streets and public property; the mayor-president having no special department but exercising a general coördinating influence over all. A single commissioner is, therefore, immediately responsible for the administration of each department. The Commission as a whole draws up and passes the annual budget, awards all contracts, and makes all important appointments. Minor appointments are made by the individual commissioners, each in his own special department. There is throughout a complete centralization of all powers, legislative and administrative, and a very definite localization of all responsibility."[1]

If the commission system of government is analyzed it will be found to have the following characteristics: first, it returns to the original form of city government in the United States in that it concentrates all powers administrative and legislative in one authority. The members of the commission collectively determine the policy of the city within the limits fixed by the state law, and individually administer the affairs of a particular branch of the city government. This is what the members of the original American city council did. Meeting in council they voted appropriations and made contracts as to city work. Acting as members of a committee they supervised the administration of some branch of municipal activity. The commission system of municipal government thus abandons the idea of the separation of powers in city government, which was applied to city government in the United States, as has been shown, not because it was believed that the principle was peculiarly applicable to urban conditions, but rather because the principle was thought to be an axiom of political science applicable to all forms of government. If the fundamental principle of this the latest development of city government in the United States is adopted the people of that country will, after a series of painful and laborious experiments in municipal organization, have reached the conclusion that the principle with which they started was the right one, and that deviation from it is productive of harm rather than good.

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[1] Munro, "The Galveston Plan of City Government," Providence Conference for Good City Government, 1907, p. 144.

The second characteristic of the commission system is to be found in the fact that the members of the body, in which all powers as to the city are concentrated, are elected at large. In this respect the commission system differs materially from the council system as we have seen it in the United States, since everywhere the majority at least of the council members represent single districts.[1] This is a very important difference, since unless some system of proportional or minority representation is also provided, it is improbable in the political conditions existing in most American cities that there will be an opposing minority in the commission. All the members of the commission will in the nature of things be elected by the political organization, state or local, which has been successful at the city election. Of course provision could be made that the terms of the different commissioners should expire at different times.[2] If this were done it would be possible for persons representing different shades of opinion to be members of the commission in case public opinion changed from year to year. But an opposing minority in the commission naturally would not be insured in this way. The absence of a minority is regarded as offset by the better character of the members which, many believe, is insured by election at large.

It is often felt by students of municipal government that it is a mistake to give the power of appropriating public money to the officers who are called upon to spend such money after it has been appropriated.[3] Those who feel that this consideration has great weight will naturally not look with favor upon the commission system. It must be remembered, however, that the union of the spending and appropriating powers is really a necessary characteristic of any form of municipal organization which combines all functions of city government in the same hands. The attempt in the United States to separate the functions of city government has been, it will be remembered, most disastrous. Any theoretical objection of this sort to the commission system can not, in the light of American municipal history, be considered as having sufficient weight to offset the advantage of the union of all municipal powers in the same hands.

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[1] Fairlie, "American Municipal Councils," *Political Science Quarterly*, XIX, p. 237.

[2] This has been done in a bill recently brought before the Kansas legislature.

[3] See Report of New York Charter Commission, 1909.

If we now compare the most important municipal systems of the western world from the viewpoint of the relative importance of the council, we find three pretty distinct forms of municipal government.

The English system. The first to be considered is the English system, which recognizes the council as the only organic authority in the municipal system. The management of public charity, which is regarded as of state rather than local interest, is, it is true, in the hands of an elective board, known as the board of guardians. But as the union, the poor law district, is not coterminous with the borough, the care of the poor should not be regarded in England as a municipal function.

With this exception, however, the borough council is really the only authority known to the law of municipal corporations in England. The English borough council has, subject to a few limitations,[1] complete power of organizing the city government. It has the power of appointing, removing and directing all borough officers, and a series of powers quite numerous and quite broad conferred upon it by the Municipal Corporations Act of 1882 and the Public Health Act of 1875,[2] and other general acts, such as the tramway acts, the baths and wash-houses acts, the libraries acts and the allotment acts.[1]

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[1] Such as the provisions that there must be a mayor and aldermen elected by the council, an education committee, a watch committee, two revising assessors for election lists and three auditors, a public health officer, an inspector of nuisances, a town clerk, a treasurer, and a chief constable.

[2] A borough is now an urban district and the borough council is an urban district or sanitary authority.

Through the exercise of these powers each English borough council may adapt the general scheme of municipal organization provided by the municipal corporations act to the needs of the borough it represents. It may adopt single-headed departments or boards as it sees fit; it may provide for the merit system of appointment or not, as it deems expedient, and it may change the details of the administrative organization which it establishes where and when it will. As a matter of fact, however, the immediate supervision of the detailed work of city administration is entrusted to council committees. Since the council has absolute power over the affairs of the borough within the limits of the law and subject to the central administrative control, there is no question in the minds of its subordinates as to its supremacy. The chance of conflict between local authorities is reduced if not eliminated. The concentration of power in the council makes it certain that the energies of municipal officers will be directed towards the carrying out in detail of the policy determined upon by the council and will not be dissipated in struggles for supremacy with each other.

The second system of municipal government to be considered is the continental system. This offers two forms: first, the German, and second, the Franco-Italian.

The German system. The German system differs from the English in that it makes provision by the side of the council for an executive, which is either one man or a board. It may be said, it is true, that municipal powers are distributed between the council and the executive, on the theory of the separation of powers; that is, that the council is a deliberative body and the executive is to execute its decisions. On the other hand, however, it is to be remembered that the executive is accorded great influence over the decisions of the council, while the members of the council both elect the members of the executive and under its direction participate in the work of administration through membership on various administrative boards which are at the head of the city executive departments.

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[1] Fairlie, "Municipal Administration," p. 386.

The executive exercises a great influence over legislation in that it may veto the acts of the council both on the ground of illegality and inexpediency, when the council may appeal to a higher state administrative authority against the veto. The city executive in Germany is an agent of the state for the enforcement of state laws and has the police ordinance power where the police power is exercised by a municipal authority. In its capacity as such state agent it acts independently of the council. Largely as a result of the moral influence which it exercises, owing to the professional character of a portion of its members, it further directs the deliberations of the council. Where the board system is adopted, and it may be taken as the typical German form, the executive board has really the initiation of legislation. The German city council is therefore largely an authority of control. Initiation of new undertakings, in accordance with the general scheme of German government, is mostly left in the hands of the executive.

The influence of the council over the executive and of the executive over legislation brings it about that legislative and administrative powers are largely coördinated. This coördination tends to prevent the occurrence of those conflicts between municipal authorities which are so disastrous to municipal efficiency, while the power to appeal to the higher authorities of the state government offers a means of quickly settling differences which may arise.

The Franco-Italian system. The Franco-Italian form of municipal government resembles the German in that the law recorgnizes other municipal authorities besides the council. The law makes provision both for a council and a number of magistrates, called in France the mayor and deputies, in Italy the sindaco and assessors, who together form what is called the *giunta*, and are elected by the municipal council. In both France and Italy the chief executive of the city assigns to the deputies and assessors respectively the different departments of municipal management, but they attend to them under his direction. In Italy the *giunta* has certain independent functions of its own to discharge and seems to occupy a more important position as a permanent executive board than do the mayor and deputies in France.

In both France and Italy, while the council has within the limits of the law, the organizing power, the power of appointment, removal and direction of the municipal officers and all administrative powers are vested in the mayor and his deputies or assessors, the ultimate power being vested in the mayor. An exception to this statement must be made in the case of those Italian cities which have entered into the field of municipal ownership since 1903. In these cities the management of each such enterprise is vested in a special director who is appointed by the council and would appear to be independent of the sindaco.[1]

Finally, the fact that in both countries the mayor is recognized for certain matters as an agent of the state government and when acting as such agent as under the control of the central administration makes him as to these matters, independent of the council.

In both France and Italy the council is thus merely a legislative body, having the power of issuing all local ordinances in Italy, in France all but police ordinances which are issued by the mayor. The council in both France and Italy is therefore not so important as in England, although the fact that the executive has no veto power over its action gives it a greater legislative power than has the council in Germany. The position of the council in both France and Italy is weakened through the legal provision fixing the number of its sessions, in France four, in Italy two, each year. In the latter country, however, the *giunta* is regarded as the permanent committee of the council. Like the German council the French council is largely an authority of control.

The American system. The third system of city government, if we may call it a system, is found in the United States. It is difficult to speak of a system of city government in the United States, because of the different laws in different states and of the habit in some states of issuing special charters to special cities. At the same time, it is almost universally the case that where the commission system has not been adopted the law recognizes both the council and the mayor, and that the council does not elect the mayor. Further, the general rule is that the heads of departments are appointed not by the council but by the mayor with the approval of the council, or by the mayor or some other authority acting independently of the council. The council is not, therefore, a body of great importance, so far as concerns its power of filling city offices. Further, owing to the special and detailed character of municipal legislation in the United States the council has largely lost the organizing power and considerable legislative power, which have been assumed by the state legislature.

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[1] See *infra*, chap. XV.

The result is that the council under the most favorable circumstances is all but shut out from the exercise of any power not distinctly legislative in character, all executive powers being vested in the mayor and executive officers, and that it is often much limited in the exercise of legislative powers. The mere fact that the charter regulates the details of the municipal organization takes away an important power from the council. The legislature is also often so niggardly in its grants of power, particularly of financial power, that it is difficult if not impossible for the council effectively to exercise its legislative power. In some states also the legislature puts into city charters provisions which regulate matters of local police or vest police powers in the mayor or an executive department, while in almost all states the mayor possesses a veto over the resolutions of the council, which can be overcome only by an extraordinary majority of the council. Varieties of the American form of city government may be spoken of as the council form, the board form, and the mayor form.

Beginning with the English system, where the council is supreme, we see that the council gradually diminishes in importance until we reach the United States. Here, while the mayor is not supreme, he with his executive officers come very near being so in certain cities. This supremacy of the executive is almost everywhere accompanied by the assumption on the part of the state legislature of the exercise of many local powers.

Council everywhere elective. The ways in which the council is constituted in different countries are as varied as the degrees of its importance. It is everywhere, however, based on the elective principle. It is true that by the French law of 1800 the council was appointed by the authorities of the central government. This law of 1800, however, organized a system of administration, generally so centralized that real local self-government was impossible under it. The city was by this law regarded as an administrative district of the state rather than as a local corportion organized for the satisfaction of local needs. The principle of central appointment was abandoned in 1831 in favor of election. It is also true that in the City of New York by the charters in force from 1873 to 1901 an authority which discharged many of the functions ordinarily discharged by the council, that is, the Board of Estimate and Apportionment, was composed of five members, two of whom were appointed by the mayor, the principal elective officer.[1] A somewhat similar plan is adopted in German cities, where the members of the executive board are appointed by the council, although the executive board has powers of legislation coördinate with those possessed by the council.

But in general we may say that in all systems of municipal government which endeavor to secure to the city large powers of local self-government the council is elective. The legislations of different countries differ, however, considerably as to the details of election. Either one of two general principles is adopted, that is, total renewal or partial renewal. By the first, all of the members of the council are elected at the same time. This is the rule which has been adopted in France and generally throughout the United States. Partial renewal is the rule in England, Germany and Italy.

District representation. In either case the vote may be by general ticket or by district ticket. In case it is by the latter, the district may be a single district, or it may be represented by a number of council members. The general ticket where no special provision is made is the rule in France, in Italy, in England, and in Germany. In the United States the single district is the rule. In all countries which adopt the general ticket it is, however, provided that the city may be divided into districts, each of which is to elect a certain minimum number of representatives on the council. Thus in England the number of members to be elected in each district must not be less than three, one of whom is to be elected each year. In France in all of the cities of over 10,000 inhabitants not less than four members of the council are to represent each district, while in Germany the number is to be determined by some authority of the central government. Where such a departure from the principle of the general ticket is permitted the actual districts which are formed are formed as a result of the concurrent action of the local and the central authorities. Thus in England the districts are made by the council by a two-thirds vote, subject to the approval of the central government at London. In France the districts are made by the general council of the department, a board similar to the board of supervisors in New York State, on the initiation of a general councillor, a member of the city council or the prefect of the department as agent of the central government, or on the petition of the electors of the city concerned. In France the districts are made only after an investigation has been made of the matter. In Prussia the matter is largely left to the city to determine. In the first place the city council is to determine whether the district plan shall be adopted, the general ticket being otherwise the rule. If the council determines to adopt it, the city executive is to attend to the apportionment, fixing not only the limits of the district but also the number of members to be elected from each district. The executive must, however, observe the rule that all voters are to be as far as possible equally represented.

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[1] The members of the Board of Estimate and Apportionment are all elected by the municipal citizens by the provisions of the present charter.

The purpose of the adoption of the district plan is to secure either local representation or minority representation. The necessity of securing local representation is present only in the larger cities. In these cities some recognition of locality is absolutely necessary. In the smaller cities the need of such recognition is hardly felt, if it is felt at all. In all, however, it is desirable to secure minority representation, or at any rate to secure on the council an opposing minority. It is only through the clash of diverse opinions that the best conclusions as to any matter are reached. It is impossible to secure these diverse opinions under the general ticket system where all of the members of the council are elected at the same time unless some system of minority representation is provided. It is possible to reach the same result under a district ticket, although the district ticket will not assure it. Thus in New York, under a single district system, one party secured every seat in the city council at the elections of 1892. At this election 166,000 votes elected all members of the council, although there was a minority vote of nearly 100,000. But as a general thing a single district system will secure an opposing minority in the council.

Minority representation. The liability that the district system will not secure minority representation and the certainty that a general ticket will not secure it have led to the agitation for the adoption of some system of minority representation. The plans which have been proposed for minority representation may be classed under three heads; namely, limited voting, cumulative voting, and proportional representation. Under the first, a voter is not permitted to vote for all places in the council to be filled at the election. This plan is adopted in Italy where every voter may vote for only four-fifths of the number of councillors to be elected, and has been tried in Boston and in New York. There are, however, serious doubts as to its constitutionality under the ordinary provisions in the American state constitutions; and it has generally been abandoned where it has been adopted in the United States. For under it a nomination for office by a party of any considerable strength could easily be made equivalent to an election.

Cumulative voting consists in giving the voter as many votes as there are places to be filled and in permitting him to distribute his votes as he sees fit. This method of voting has been adopted in the Illinois constitution for elections to the lower house of the state legislature and to the councils of some cities in the state. This method is probably not constitutional under the ordinary American state constitutions. On the whole it may be said to have secured the representation of minorities. Under it, however, nomination as in the case of limited voting is practically equivalent to election. Further, on account of the concentration of votes on a popular candidate, it may result in the election of a majority of the candidates by a minority of the voters. Party organization and discipline must be very strong to secure a proper representation of the voters. The danger of such concentration may be avoided by not permitting cumulation of votes beyond a certain number. In the case of a municipal election this may be secured by the abandonment of the general ticket and the establishment of districts in which no more than three or five members are to be elected. Cumulative voting is on the whole the most feasible and workable type of minority representation which has been devised, because although it will not probably produce mathematically exact proportionality in representation, it is the easiest to operate and its dangers being known can be more easily guarded against. The system of cumulative voting is, under the name of "free voting," strongly advocated by Mr. Eaton.[1]

The third system of minority representation is known as proportional representation. The most mathematically exact system is that known as Hare's system. This system is used in some of the elections in Denmark. This is, however, very complicated and is on that account not practicable for municipal elections in large cities.

Another system has been adopted in Switzerland that is known as the "free-list system." By this the voter is confined to the candidates put in nomination, and must, as a rule, vote a straight party ticket. The number of votes cast is divided by the number of persons to be elected, the result being known as the electoral quotient. The number of votes cast by each party is divided by the electoral quotient, the result being the number of candidates elected by each party, those being chosen who stand the first on the party list. In the case of fractions left over after such division two rules have been adopted: one gives preference to the party having the largest fraction, the other to the party casting the highest number of votes. The latter is deemed preferable, inasmuch as the system of "forced fractions," as it is called, sometimes leads, where few offices are to be filled, to the election of a majority of the candidates by a minority of the voters.

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[1] See "Government of Municipalities."

Many schemes have been devised for varying the details of this general system to meet objections such as have been instanced. They all, however, complicate the processes of election and justify the remark that has been made of the system generally, that it would be difficult to convince even intelligent voters that the announced results of the election carried on under the system were in conformity with the actual votes cast. A further objection to the scheme of proportional representation would be that even if the results claimed by its advocates were actually produced the body elected under it would be in danger of becoming a debating society rather than a body capable of political action. What is desired by minority representation is not so much a body in which every shade of existing opinion is represented, as a body which, while possessing a majority capable of political action, has at the same time a minority capable of opposing and causing a modification of the results desired by the majority. Such a result is secured ordinarily both by the single district system and by the system of cumulative voting.

In most cases a plurality of the votes cast elects, but in France and Germany a majority is necessary to elect on the first ballot. If this is not secured another ballot is taken when a plurality elects. In Germany the voter at the second election must vote for one of the two candidates receiving the largest number of votes at the first election.[1]

Term of council members. The term of council members bears a close connection with the subject which has just been considered. If the principle of partial renewal is adopted, as is usually the case, the term is two, three, five or six years, so that the council may be renewed by halves, by thirds, or by fifths. Thus in England the councillors have a term of three years, one-third of the number being elected each year. In Germany generally the term is six years, one-third of the members being elected every two years, while in Italy the term is five years, one-fifth of the number of the council being elected every year. Where the principle of total renewal at one election is adopted the usual term varies from one year as in Boston to four years as in St. Louis. The average term in the United States is two years, as in New York.

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[1] Hatton, "Digest of City Charters," p. 58.

Finally, the council sometimes consists of different classes of members, if it is not divided into two chambers. The general rule, however, is that it consists of one chamber, the only exceptions being found in the United States where, however, the two-chamber system is comparatively rare.[1] The only modification of this principle is found in Germany and Italy where the executive board or *giunta* performs, particularly in Germany, some of the functions of a second chamber. In England, however, the council is composed of two classes: the councillors elected by the municipal citizens, and the alderman elected by by the councillors for a term of six years, one-half retiring every three years. This principle is also applied, though rarely, in the United States. Here, the aldermen, where we find them as distinguished from the councillors, are elected at large while the councillors are elected by districts.

A word should be said as to the size of the council before closing what is to be said concerning its composition. There is very little agreement as to this matter, either between the plans adopted in the United States and those adopted in Europe, or between those adopted in the different cities of the United States. The number varies from four hundred in Buda-Pesth to sixteen, which is the number in Denver, Colorado.[2] In the City of Newport, Rhode Island, there is by the new charter a council of one hundred and ninety-five members thirty-nine of whom are chosen from each of five wards. Thirteen are chosen each year and serve for a term of three years.[3]

Local self-government. The reasons which have induced the selection of a given number of council members are difficult of ascertainment. It may, however, be said that the number appears to be large where the attempt is made to secure real, local self-government; that is, government by the people of the city in their own interest and through the selection of persons from among their own number who are not in politics for a livelihood, but who are at the same time that they are discharging municipal functions making their living out of some other occupation. If, on the other hand, the kind of municipal government which is desired is the execution by more or less professional municipal officers, of laws largely made by the state authorities, the council is small. It may further be said that the kind of municipal government which is desired has an influence also both on the term of the members and on the method of renewing the council. That is, if local self-government, in the sense in which the words have just been used, is desired, the term of the members of the council is a comparatively long one and the council is only partially renewed at each election.[1]

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[1] Fairlie, "Municipal Administration," p. 377.

[2] Fairlie, "Municipal Administration," p. 378; Digest, p. 90.

[3] Chadwick, "The Newport Plan," Providence Conference for Good City Government, 1907, p. 166.

The English system may be taken as an example of a system which strives to secure such local self-government. Here in the larger cities the council consists of from eighty to one hundred members. The city is divided into districts and the terms of the members of the council are such that every district will elect one member at each annual election, and that at such election one-third of the total number of the councillors will be chosen. This council is divided up into committees, each of which has charge of some one branch of municipal administration. The number of the council members being large, committee work can be so distributed among the members that each member can do his share without being overburdened. It is possible under such a system to make service as a council member unpaid, inasmuch as each council member can obtain his livelihood from his ordinary vocation, and also to make it compulsory, inasmuch as a large part of a man's time is not required for his public work. The system adopted in Germany, which produces the same result, is based on the same principle, that is, of large councils, long terms and partial renewals, and lays great emphasis on compulsory, unpaid service. Only in the United States are the members of the council paid.

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[1] As to the effect on local self-government of a large council, see articles in Providence Conference for Good City Government, 1907; Munro, "The Galveston Plan," p. 142; Chadwick, "The Newport Plan," p. 166, and Sikes, "How Chicago is Winning Good Government."

The French and American plans for the composition of the council agree, in that they usually provide for a complete renewal of the council at the same election. They differ, however, in that in France the term of the council members is a long one, namely, four years; while in the United States it is a short one, seldom more than two years. The difference between the Franco-American plan of total renewal and the Anglo-German plan of partial renewal is accounted for by the fact that under the one the members of the council as members are more or less confined to deliberative business, while under the other the members in other capacities such as members of committees do a great deal of administrative work. The difference between the French and the American plans as to the length of the term is accounted for by the fact that in France an attempt is made to observe the distinction of legislation from administration and to vest the former in a body of some strength, while in the United States the tendency has been to reduce the council to a position of unimportance. This could be more easily done by giving council members a short term. Continuity in administration is very desirable and can be more easily secured under the system of partial renewal.

As a general rule special qualifications for membership in the council are required. Sometimes they do not permit of the election of every voter, and sometimes, though not often, they permit of the election of persons who are not voters. The usual qualification is a property one, which may be evidenced either by the payment of taxes or the ownership of property. Such qualifications are regarded as constitutional under the ordinary provisions of the American state constitutions, although they are not as a matter of fact so common in the United States as in Europe. As a general thing, however, every voter is qualified, while in England and France either all tax-payers whether voters or not are qualified, provided the total number of non-residents does not exceed one quarter of the council, as in France, or all who live within a certain distance of the city, as in England. In Germany, finally, one-half of the council must be house owners.

Attitude of voters. A satisfactory conclusion as to the real position of the city council in different countries cannot be reached merely from a consideration of the law with regard to its composition. For the real position of the council is determined by the attitude and habits of the municipal voters as far as these affect the election of council members. The attitude of the voters even under a suffrage which lays little stress on property qualifications may be of such a character as to bring into office as council members men who from a social point of view belong to a much higher class than that of the voters who elect them. If this is the case the system of government while in theory quite democratic will be in essence aristocratic. This is largely the case in England where there exists a class feeling whose influences are to an American difficult of comprehension. As a result of this class feeling there is a deference on the part of large masses of the population to what are recognized as the upper classes which makes voters willing if not eager to obtain members from these classes to represent them in the city government.

Character of council in England. A typical instance of the conditions due to this attitude of the municipal voters is to be found in the City of Liverpool. Liverpool was in 1906 divided into thirty-five wards. Thirty-four of these wards were represented by one alderman and three councillors for each ward; one ward was represented by only one councillor. The council in 1906 consisted therefore of one hundred thirty-seven members. Of these one hundred thirty-seven only twenty-five lived in the wards they represented, while one hundred and twelve lived outside the wards which elected them as their representatives in the council, or to which as aldermen they had been assigned. Of these one hundred and twelve fifty lived outside the limits of the city. These fifty were all of the upper business and professional classes. Furthermore, forty-four other members of the council lived in the six richest residential wards of the city. With the fifty living outside of the city there were thus in all ninety-four members of the council who lived in the better residential districts within or without the city limits.

The degree to which the poorer classes of the community are represented by members of the wealthier classes becomes apparent when we compare the working class wards with the richer residential wards. Twenty of the wards may be described as working class wards including at one extreme the slums and at the other the districts in which reside the upper grades of artisans. In 1906 of the eighty aldermen and councillors accredited to these wards only eight lived in the wards they represented, and of the seventy-two who lived outside the wards they represented fifty-three lived in the six richest residential wards of the suburbs. On the other hand, of the twenty-eight representatives of the seven residential wards occupied by the middle and richest classes sixteen lived in the wards they represented and only twelve outside. These outsiders lived in other wards or in the suburbs among people of the same social standing as those they represented. Thus while the strictly working class wards were entitled to eighty representatives two-thirds of these representatives resided in the residential wards and suburbs, while the people of the residential wards which were entitled only to twenty-eight representatives elected practically all of such representatives from among their own neighbors. Finally, there were two strictly business and commercial wards represented by business men.

The council of the City of Liverpool is thus in the control of the richer classes of the community. A few members of the council were in 1906 described as "very rich men;" at least one hundred of the one hundred and thirty-seven members were said to be "fairly well to do," or "moderately wealthy;" only about twenty were described as "poor men." Another census of the council brought out the fact that it contained thirty-nine wholesale and retail merchants, twelve brokers and agents, nine manufacturers, twelve lawyers, eleven building employers, five trades unionists and socialists and fifteen engaged in the liquor business. Nearly all of these fifteen were, however, manufacturing brewers and not retail liquor dealers. In a word it may be said then that the members of the council of the City of Liverpool were in 1906 to the extent of two-thirds large and small business men and employers of labor and to the extent of one-fifth professional men whose associations were with business men. What is true of Liverpool is just as true of most other British cities.

The fact that much the larger portion of the municipal councillors in Great Britain are not residents of the wards they represent attracts scarcely any attention among the voters. In choosing as their representatives persons recognized not to be of their own class the voters are probably not consciously actuated by the desire to honor those whom they deem to be their betters. On the contrary in many if not most cases they are in all probability governed by the belief that in thus acting they are securing more efficient representatives than could be secured from among those of their own class who reside in the district. For to be influential in English political life a man must be socially presentable and if possible well connected. Sidney Low in *The Governance of England* has pointed out how small is the class which is politically influential in Great Britain and how difficult it is for a man to become politically eminent who is not by birth or education capable of so comporting himself as to be welcome to that class. If one is not thus welcome it is difficult if not impossible for him to obtain access to those in control of the government. While what Mr. Low says is unquestionably more pertinent to imperial than to municipal politics it is none the less true that his remarks have an application to municipal politics. For as a result of that desire, which would seem to be common to all men, to imitate what they admire, those in control of the city, although not of the recognized aristocratic class, do not fail to be influenced by aristocratic ideas; they thus strive to carry on their municipal business by methods and according to standards which conduce to great official dignity and decorum. One of the results of this course on their part is that it is difficult if not impossible for a poor man who may be elected to the city council to keep the pace believed to be necessary by his fellow representatives. This difficulty is naturally increased by the fact that while conscientious service by a municipal councillor absorbs a great deal of time it is absolutely unremunerated.

Notwithstanding this gratuitous character of the service of the city councillor it is possible to secure good men in the councils because of the belief that successful service for the municipality will be rewarded by a personal and social distinction which can with difficulty be secured in any other way.

Another characteristic of the British municipal councils, which is also due to extra-legal rather than to legal conditions, is that the council is comparatively permanent in its membership. Re-elections of councillors are very frequent. It is not uncommon to find members of these bodies who have served ten, fifteen or even twenty years. Their re-election is facilitated by the provisions of the election law which make unnecessary a resort to the polls in districts which are not contested, i. e., districts in which only one candidate is nominated. Uncontested elections are not infrequent in the case of members of a council who have represented their district satisfactorily to the voters, and are not unknown in case of first elections. In 1906 there was a member of the council of one of the large British cities who had been in the council more than twenty years and whose name had never been voted on by the members of the district he represented.

What has been said of the composition of the councils and of the length of service of council members is just as true of the committees of the council which manage the various branches of municipal administration. Thus, in the City of Birmingham, of the eight members of the Gas Committee only one lived, in the year 1906, in the ward he represented; six lived outside of the city limits in one of the aristocratic suburbs. Every one of these eight members represented a strictly working class ward. The chairman was one of the leading business men of the city and had for thirteen years been a member of the committee. Four others were also leading manufacturers in the city and had served in the council for terms varying from three to fifteen years.

In Glasgow in the same year nine of the committee-men had served two years; seven, three years; eight, four years; six, five years; nine, six years; one, seven years; one, eight years; one, nine years; three, ten years; two, eleven years; two, twelve years;

one, thirteen years; one, fourteen years; seven, fifteen years; two, eighteen years; two, twenty years; three, twenty-one years; two, twenty-four years; and three, twenty-five years.[1]

In Germany. The character of the members of German city councils is much like that of council members in England. Merchants, manufacturers and members of the learned professions form a large proportion of the membership.[2] Re-elections also are quite common.[3] It should also be remembered that by law one-half of the members must be house owners. As a matter of fact this number is often exceeded.[4]

In the United States. In the United States the democratic character of the municipal council, due to the adoption of the principle of manhood suffrage, is—different from the conditions in England—increased rather than decreased by the attitude of the voters. In 1895 Mayor Matthews of Boston collected some definite facts as to the social standing and character of persons elected to the council of the City of Boston. "He presented statistics showing that during the first fifty years after the creation of the city government, in 1822, from eighty-five to ninety-five per cent of the council were owners of property assessed for taxation, but after 1875 the proportion had rapidly declined and in 1895 less than 30% of the council members were property owners. Not only had the percentage of property owners declined but the total assessed value of property owned by council members, which had been $986,400 in 1822 and $2,300,400 in 1875, had fallen to $372,000 in 1894."[5]

In the United States the people not only seem to prefer to elect persons owning little or no property to the council; they also seem to prefer to change their representatives in the council very frequently. The result is a rather short term of service which is favored both by the failure to re-elect and by the short term for which a council member is at any given time elected. From 1836 to 1900 there had been in "Newark, N. J., a total of five hundred and sixty-nine aldermen. Of these three hundred and forty-two, about sixty per cent. had held the position for two years or less; forty-nine had served for three years, and one hundred and seventeen for four years. Only sixty-one, or a little over ten per cent, had served for more than four years and forty of these had only two years additional. Of the remaining twenty-one, seventeen were aldermen from seven to ten years; and the four holding records for longest service held the position for thirteen, fourteen, sixteen and twenty-two years respectively. The St. Louis House of Delegates of 1899–1901 had among its twenty-eight members but eight who had served in the previous house and only two who had a longer term of service. One of these two, however, had been a member of the House for fourteen years. The Cincinnati Board of Legislation in 1900, out of thirty-one members, had four who were also on the board in 1895. The Cleveland council of 1901–02 had not a single member who was on the council in 1895.

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[1] Goodnow, "The British Municipality," National Civic Federation Report on Municipal and Private Operation of Public Utilities, Part I, Vol. 1, p. 43.

[2] Schriften des Vereins für Socialpolitik, Vol. 118, pp. 42, 114.

[3] Ibid., p. 119.

[4] Ibid., p. 115.

[5] Fairlie, "American Municipal Councils," *Political Science Quarterly*, XIX, p. 242.

The Chicago council in recent years shows a large proportion of re-elections. Of the thirty-five members whose terms expired in the spring of 1902 twenty-two (nearly two-thirds) were re-elected. . . . Seven have served for six years, four for eight years, and one member has been in the council for fourteen years. At the council election of Detroit in 1901 seven of the seventeen members chosen were re-elected."[1]

In France. The character of the French city councils would appear to be somewhat the same as that of city councils in the United States. M. Berthélemy says:[2] "Most of the great French cities are administered by assemblies composed for the most part of persons unequal to the task which they undertake, and sometimes of a doubtful morality. The unfortunately general and very partisan political character of French municipal elections has consequences most regrettable.

"These are, in the first place, the exclusion of all special representation of important interests even where these interests are imperilled.

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[1] Ibid., p. 236.

[2] Schriften des Vereins für Socialpolitik, Vol. 123, p. 170

"They are, in the second place, that taxes and loans are voted by the representatives of persons who by reason of poverty do not feel their burden and are only indirectly affected by an increase of debt. . . .

"Another unfortunate result of the political character of municipal councils is to be found in their instability."

Powers of council. The powers of the council depend first upon the relation of the city to the state and second on the relations of the council to the executive authorities of the city.

If the state has granted general powers of local government to the city, as is the case on the continent of Europe and in one or two states of the United States, the council as the principal authority for their exercise has very wide powers. If, on the other hand, the state enumerates the powers of the city, as it generally does in England and the United States, the extent of the powers of the council is determined by the extent of the enumerated powers granted. In the United States, where the practice has been to pass special municipal corporation acts, which are very detailed in character, the powers granted to the council are comparatively small in extent.

If the system of municipal government adopted recognizes the existence of other municipal authorities than the council, as it does everywhere except in England, the council loses in power, either as a result of the fact that the participation of the executive authorities is necessary to valid action by the council, or because powers conferred upon the city are to be exercised by the executive authorities and not by the council. The former is the case in Germany; the latter is the case in France, Italy and the United States. In France and Italy the council possesses no administrative power, but does possess legislative power, although in France and Germany it has little or no power of local police ordinance. In the United States the council has little administrative power and has to share the exercise of the ordinance power with the executive, which has always the right to veto council ordinances, and sometimes exercises alone the ordinance power.

As a result of these conditions we find that the power of determining the details of the municipal organization is possessed by the council in England, France, Italy, and with some limitations in Germany, but not except in rare instances in the United States. Here this power has been exercised by the legislature by fixing the details in the charter or statutes governing the city.

The council everywhere except in the United States, in addition to fixing the details of the municipal organization, appoints the principal executive officers, such as the mayor and heads of the municipal executive departments. In the United States the only power of this character which it possesses in the larger cities is to confirm the appointments of the mayor, and even this power is not possessed by the council in the largest cities. In the smaller cities of the United States, however, the council often appoints certain of the most important city officers. The mayor is, except in Germany and most of the large cities of the United States, the president of the council. The council elects its own president, however, in Germany. In New York the presiding officer of the council, that is the president of the board of aldermen, is elected by the people of the city in the same manner as is the mayor. The council usually, however, elects the other officers necessary for the exercise of its powers.

As a general rule elections to the council are determined by some state court, either in final or in original instance as well. The latter is the rule in England, France and Germany. In some cases the council in the United States determines the matter in first instance with appeal in proper form to the courts, while in very rare instances they have the final determination as well. The city council usually fixes its own rules of procedure. The great exception is in the United States, where the charter usually contains provisions relative to the number of members who will constitute a quorum, the majority required to pass a resolution which is often greater than an ordinary majority, particularly in cases involving the expenditure of money, or relating to the property of the city; the amount of deliberation necessary to the validity of the action of the council, such as the number of readings of council bills, etc., etc. All such provisions must be observed, else the action of the council will be invalid.

Outside of the power of determining the details of municipal organization, the powers of city councils may be classified as: first, ordinance powers; second, powers to determine the sphere of municipal activity; and third, financial powers.

Ordinance powers. By these powers are meant the powers to lay down rules of conduct which are binding upon the inhabitants of the city. During the Middle Ages this power embraced a much wider field than now. At present the state legislature fixes most of the rules of conduct which must be observed by the citizen in his ordinary life, and leaves to the city merely the power to regulate some of those relations, which as the result of the presence of an urban population, need regulation of a special character. The power is usually referred to as the power of police ordinance. In Germany, however, city councils still have wide powers of local legislation and may as a result of their exercise regulate many details of the law with regard to local elections, taxation and the conditions of labor.[1]

The police ordinance power is usually under the continental system of municipal government conferred upon the executive. Thus in Germany and France it is possessed by the burgomaster and the mayor, when it is not granted to a state appointed authority.[2] By the Anglo-American law, however, the power of ordinance is in theory vested in the council. Indeed, by the common law of England and the United States the council has the right to issue such ordinances merely as the result of the incorporation of the city. This implied ordinance power is the one important exception to the Anglo-American rule of the enumeration of municipal powers. General grants of such police ordinance power, however, often are expressly conferred upon cities by the Anglo-American law.

The theory of the American law that police ordinance power is conferred by general grant, either express or implied, upon the city council is, however, largely departed from in practice. It is often the case that the subjects which may be regulated are enumerated in the charter in great detail when it is usually held that, applying the principle that "the mention of the one excludes the other," the authority in which such powers are vested may take action only as to the enumerated subjects. The effect of the long enumerations found in many of the American municipal charters is therefore usually a limitation of the common law powers of the ordinance authorities. The only effect that such enumeration has in enlarging the police ordinance power is that the courts may not, as in the case of the exercise of the common law ordinance powers, declare void an ordinance on the ground of its unreasonableness. The reasonableness of the regulation is regarded in the case of an ordinance passed as a result of the exercise of an express power of ordinance as settled by the legislature. In England it would seem that all council ordinances or bye-laws, as they are called, may be declared by the courts void as unreasonable, even where they have been approved by a higher state authority such as the Local Government Board.[1] The only control which the courts have over these ordinances in continental Europe is to declare them void where they are in excess of the powers of the authority adopting them.

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[1] Schriften des Vereins für Socialpolitik, Vol. 117, pp. 29, 143.

[2] Leidig, op. cit., p. 457; Berthélemy, "Traité Elémentaire du Droit Administratif," p. 199.

Finally, as has been pointed out, many charters in the United States vest the ordinance power not in the council but in some executive municipal authority or take it away from all municipal authorities by regulating the matter in their own provisions.

Where a general police ordinance power is vested in a city council the law of the United States often derives powers from it which are not in our classification included within it. For example: the power to establish municipal water works as having an important bearing upon the public health, and the power to establish municipal electric light works which distribute the electric light to the inhabitants of the city, as having an important influence upon the safety of the inhabitants of the city, have been derived either from the general health ordinance powers or merely from the general ordinance powers of the city council.

There can be little doubt that the English and the original American method by which the ordinance power is vested in the council is the preferable method. Where an ordinance is made by an executive authority there is generally no debate; its passage is not subjected to publicity. The ordinance can therefore receive no criticism until it is placed upon the statute books. Mr. Eaton says of the sanitary code of New York City, the original of which, consisting of 165 ordinances, he himself drafted, "that with very small changes they were adopted by the board [of health] without any hearing or consent on the part of any other city authority or even of the city itself" notwithstanding that they profoundly affected "many important private interests and rights, as well as the duties of many city officers outside of the board."[1]

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[1] Hirst, op. cit., p. 28.

The worst method is the one adopted in many American cities where "the ordinance making power is distributed between limited councils, commissions, boards and single officers. Much conflict, confusion and needless litigation are the inevitable result, as there would be concerning the laws if there were several law making bodies in the same state. Ordinances which all citizens must obey certainly ought to be enacted by a competent body having general city jurisdiction after public debate and a consideration of the needs of all official departments and all business interests; but quite generally in American cities, by reason of the lack of any competent council, ordinances are made in a semi-secret manner by some authority—some commission, board or officer having only a limited jurisdiction—without conferring with those at the head of other parts of the administration or even the hearing of representatives of the city or its people. Besides large parts of the administration are not regulated by ordinances at all as justice and good administration require they should be, for where good ordinances end, in municipal administration despotic or corrupt official favoritism generally begins."[2]

The power to determine the sphere of municipal activity. By this power is meant the power to establish services for the benefit of the municipal inhabitants. The continental cities have this power except so far as the ground has been occupied by the state or some other governmental authority with the permission of the state. This is as a result of the grant to them of general powers of local government. As the result of the possession of such a power the continental city may, if its financial resources permit, provide for supplying its citizens with water, gas, light and eletricity, and for inter-urban transportation. It may do this by entering into such contract as it deems proper with some private corporation, which is the actual practice throughout France[1] or it may establish and operate the necessary plant itself, as is frequently done in Germany. It may in this latter country and quite commonly does provide insurance against fire for its citizens. It may establish institutions for loaning money to those in need of temporary pecuniary help, as is done in France by means of the monts de piété. It may establish free libraries and play grounds and conduct theatres and concerts for the instruction, recreation and amusement of its inhabitants.

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[1] "The Government of Municipalities," p. 263.

[2] Ibid., p. 262.

All these things the continental city council may do as a result of the exercise of its general power of local government, without the necessity of applying to the legislature for a grant of the power to do the special thing it desires to do; and it does all these things, not as an agent of the state, but as an organization for the satisfaction of the local needs of its inhabitants. Whereas, when it acts as agent of the state it is subject to the control of the state whose interests are affected by its action; when acting as an organization for the satisfaction of local needs, it acts free from almost all central control, except such as is exercised over the financial powers whose exercise is necessitated by the use of its material powers, if we may call them by this name. When the continental city is acting as the agent of the state its powers are quite commonly exercised by the executive, in France the mayor, in Germany the executive board. When it acts as local government it is the council which determines whether the city shall enlarge or contract its sphere of activity, subject only in Germany to the veto of the executive board from which veto appeal may be taken to the proper supervisory authority of the state government.

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[1] This is so because of the view entertained by the Council of State, the highest administrative court, as to the powers of municipal councils. See *infra*, p. 355. The power of French municipal councils as to undertakings making use of the streets is less than elsewhere because the main streets being part of the state highways are under the control of the central government. Munro, "The Government of European Cities," p. 54.

In England and the United States conditions are quite different. As has been pointed out the English and American cities are not endowed with general powers of local government, but may only act where it is the evident intention of the legislature that they may act. In England it is true the laws of Parliament passed during the nineteenth century granted to the cities very wide freedom of action, but even in England it cannot be said that either as a matter of law or of practice the sphere of municipal activity is as broad as it is on the continent. Where, however, the English city may act it is the council as the only legally recognized authority in the city government which acts.

In the United States the acts of the state legislatures have not granted so wide powers to the cities even as in England and the practice is, whenever it is desired to enlarge the sphere of municipal activity, for an appeal to be made to the legislature for the necessary power. Further, the powers which are granted to the city are granted frequently not to the council but to the executive authority. This has been particularly true of the city of New York during the last thirty years, where the Board of Estimate and Apportionment or some other executive authority has, as a result of special legislation, to exercise the powers granted to the city, by means of which the sphere of New York's activity has been increased. The only possible exception to the rule of the narrow powers of the American city councils is to be found in the case of councils which possess a general police power. This, it has been shown, has in some cases been given a very wide expansion.

Financial powers. These powers relate to city property and city taxes and city indebtedness. As a general rule the financial powers of all cities are either enumerated or subjected to pretty strict central control. This principle of state control over municipal financial powers seems to have been adopted as a result of the apparently inherent tendency of municipal corporations to be extravagant. We find traces of such control in the early days of the Roman Empire where the emperors appointed curators whose principal duty it was to prevent extravagant management of municipal property. One of the main reasons why the Crown imposed its control upon the cities in France and Germany was to prevent them from running into debt and from wasting their property. In England, however, the central control over the finances of cities apart from the taxing power was not introduced until the nineteenth century, while in the United States the same century saw the introduction not merely of limitations on the financial powers of cities, but also upon the power of the legislature to grant to cities financial powers. Such for example are the common limitations found in the American state constitutions upon the municipal tax rate and municipal indebtedness. In the United States also much reliance has been placed on the popular control through the referendum and similar expedients to curb this tendency towards municipal extravagance.

So far as concerns municipal property the rule has almost everywhere been introduced that municipal property devoted to a public service is inalienable. Thus in the United States it has been held that without special legislative authorization a municipality may not alienate public municipal property such as its parks or water works. Alienation of city property by sale or long lease is permitted on the continent of Europe only with the consent of the central government.[1] The only exception to this general rule is in the case of involuntary alienation, that is, sale on execution, which is permitted in the case of all property in Germany,[2] and in the case of private property in the United States.[3] The management of city property is of course in England vested in the council. Where, however, an executive organ exists as in France, Germany and the United States, the management of city property is commonly subjected to the control of the executive, if it is not absolutely vested in the executive.

It would seem to be the universal rule that no city has any inherent right to levy taxes. The taxing power is distinctly governmental in character and can be exercised by a city only as a result of the fact that this power has been clearly granted to the city by the state. This rule has two important effects. First, no city has any general taxing power; that is, no city may impose any kind of tax which it has not been permitted by the legislature to impose. The legislature sometimes grants to cities such a general power of taxation. As a general thing, however, a city's powers of taxation, so far as the kind of the tax is concerned, consists in the power to add a percentage to the state tax or to certain specified state taxes. There are, however, exceptions to this rule. Thus in England the whole system of city taxation is quite different from state taxation, and the taxes levied by cities are technically known as "rates," as opposed to "taxes," which are levied by the central government. Thus again in France and Italy one of the principal sources of municipal revenue is found in what are known as octroi taxes, that is taxes on objects brought into the city for consumption therein. Thus again, in some of the states of the United States, as for example New York and Pennsylvania, the cities levy their taxes on land while the state gets its revenue from other sources. In all the states of the United States a large part of the city revenue comes from assessments for local improvements of supposed benefit to the property on which they are imposed. These are technically distinguished in many ways from taxes.

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[1] Berthélemy, op. cit., p. 192; Leidig, op. cit., p. 207.

[2] Leidig, op. cit., p. 198.

[3] Dillon, "The Law of Municipal Corporations," 4th ed., Vol. II, p. 673.

The second effect of this rule is that no city can levy taxes beyond the amount fixed in the law, nor for purposes for which provision is not made in the law. The rate of city taxation is often in the United States fixed by the legislature or in the state constitution, when the legislature may not authorize any excess. On the continent, however, it is usually fixed in the law and may be exceeded only with the permission of the central administration. The limitation of purpose is not so common as the limitation of rate; but by the law of the United States city taxes are always limited to public, and in many cases further to municipal purposes. The character of the purpose is determined by the courts. These, in their decisions, have laid down rules which preclude the American cities from making use of the taxing power for a number of purposes for which it is used in Europe. Thus taxes may not be levied in the United States for the support of private schools, for aiding the inhabitants to rebuild their property in case of fire, for aiding in establishing a local industry, and so on. It would be very doubtful whether a city might make even an indirect use of its taxing power by spending money to provide insurance against fire, as is quite common in Germany.

Where taxing powers are given they are commonly vested in the council, so far as concerns their exercise for purely local purposes. In a number of cities in the United States, however, the taxing power is vested in the executive officers, as is the case in the City of New York. Here an executive board, called the Board of Estimate and Apportionment, practically exercises the taxing power, in that it determines the amount of the appropriations which it is the duty of the board of aldermen to raise by the levy of taxes.

Where, however, the taxing power is granted for the purpose of obtaining money to defray the expenses of those branches of administration in which the city acts as the agent of the state the power is ultimately exercised by no city authority. It is true it is the duty of the tax levying authority in the city, whether it be the council or the executive, to levy the taxes necessary for the purposes of state government, but if such authority neglects or refuses to do its duty, the supervisory authority may step in and force the levy of the necessary tax. On the continent this is some administrative authority of the central government. In the United States the exercise of the taxing power may be forced by the courts. This, however, may be an ineffective remedy, since it is usually available only in case of the application of a private individual and since in many instances the court can do no more than punish the tax authority for not doing its duty. It may not itself perform the neglected duty.

The power to incur debts, the last of the financial powers of the city, is treated somewhat more liberally than the other financial powers. Cities almost everywhere possess the power to incur debts as a result of the fact of their being corporations. Even in the United States the courts recognize such a power in the absence of the grant to the city of such a power by the legislature. As a general thing, however, the power to incur debt is subject to limitations. These limitations are in the United States to be found in the statutes or the constitutions and the courts are pretty strict in holding the corporations up to the law, giving a wide interpretation to the words "debt" or "indebtedness" where they occur in the limiting clauses of the statutes or the constitutions. Further, the courts in the United States apply to the power to incur debt the same rules which they apply to the taxing power, holding void debts incurred for other than public purposes, on the ground that these debts must be paid for out of the proceeds of taxation, and that therefore the taxing power is exercised on the occasion of the exercise of the power to incur indebtedness.

On the continent and to a less degree in England the control of the power of the city to incur debts is exercised by an administrative rather than by the legislative authority of the government. That is, the law fixes a limit beyond which the cities may not incur debts without the authorization of some administrative authority of the central government. In Prussia the incurring of any debt which increases the debt of the city must receive the approval of the central government.[1]

In very rare instances is any provision made for a special appeal to the legislature for the increase of the debt limit. This, however, is done in France by the law of 1884 and is almost the only instance of the exercise by the legislature of a control over cities by means of special legislation. In England, on the contrary, a limit to the indebtedness of cities is fixed by statute, but within that limit the approval of the debt by an administrative authority of the central government must very commonly be secured in order that the debt may be incurred. This approval may be refused both because of the amount of the indebtedness of the particular city and because in the opinion of the supervisory authorities the purpose for which the debt is to be incurred is not a proper one.

In all these cases the power to incur debts is vested in the council or the executive authorities of the city in accordance with the position which has been assigned to these bodies. In

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[1] Leidig, op. cit., p. 337.

England the power is vested in the council; in France the rule is the same, because of the fact that the power is regarded as legislative in character. In Germany the power is exercised by the council and the executive; in the United States the council must ordinarily take action, but the executive must in nearly all cases participate as a result of his power to veto.

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CHAPTER XI

THE CITY EXECUTIVE[1]

Predominance of executive. What has already been said has been sufficient to show that the city executive occupies a very different position in the different countries. While in England and the United States we find in the cities an officer called a mayor, in the former country he is little more than the presiding officer of the council; in the latter he is a real executive authority. What is true of the United States is also true of France, Italy and Germany, where the maire, the sindaco, or the burgomaster even in those cities having a city executive board (*magistrat*), discharges real executive powers. In the German cities which have the board form of executive, the executive board is also a real executive authority. Further, while in France and Italy the executive has no appreciable influence over the legislative functions of the city council, in both Germany and the United States the executive has a veto over all acts of the council. In Germany (Prussia) the burgomaster may veto the resolutions of the executive board. In Germany this veto may be reversed on appeal to a higher state authority; in the United States, by an extraordinary council majority.

But while there is thus no agreement as to the position which the mayor or similar officer shall occupy, there is general agreement outside of England that there shall be a certain degree of separation between the legislative and executive powers, each of which is, roughly speaking, vested in a separate authority. The degree of separation is not, however, everywhere the same. The United States is the country which carries this separation the farthest. This is due to the fact that the mayor does not owe his position to the council, but is elected by the voters by whom the members of the council are elected. In other countries he is elected by the council. In England, France and Italy only council members are eligible for election as mayor. In England, France and Italy therefore it may be said to be the fundamental conception of the position of the mayor that he is to be largely dependent upon and a subordinate of the council, which is thus given, notwithstanding any separation which may be made of the executive and the legislative authorities in the municipal organization, the predominant position. The mayor is in none of these countries given a power, like the veto power, of exercising any legal influence over the council. In France and Italy the position of the council in relation to the mayor is weakened by the provision of the law limiting the number of the sessions of the council to four or two each year. And as a matter of fact the council is, after it has elected the mayor, largely guided by him.

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[1] Authorities: The same as for the preceding chapter; Schriften des Vereins für Socialpolitik, Vols. 117, 118, 123.

In contrast with the position of the municipal executive given to him by the law in England, France and Italy we may place the position which he occupies in both the United States and Germany. It is true, of course, that the executive in Germany is elected by the council, but the central government's approval of the council's choice is necessary in case of the burgomaster and the professional members of the executive board in order that the choice of the council may be effective; and the members of the executive serve for long terms and are removable during their term of office only for cause. The tenure of the executive is thus not of such a character that the executive can be said to be the council's man. The veto power which the executive has in both countries is a further indication that the fundamental idea of the German and American system is not to give the council a predominant position in the municipal organization. On the contrary, the fundamental idea of these systems would seem to be the establishment of two somewhat coördinate authorities in the city government. As a matter of fact because of either legal provision or political conditions the dominating factor in the municipal organization is, outside of Great Britain and those cities in the United States which still cling to the council system, the executive. The executive is with these exceptions the initiating and the council is the controlling authority in city government.

Term of executive. The term of the executive differs in different countries; in England the executive (mayor) serves one year; in France, four years; in Italy, three years; in Germany, as a rule twelve years, though sometimes for life; in the United States, from one to four years, generally two years. England and Germany here carry out logically the idea at the bottom of their respective municipal systems, while France, Italy and the United States do not; the first two countries, in that they give their executive a term inconsistent with that dependence upon the council which the system in other respects seems to seek; the United States, in that the mayor has often such a short term as seriously to diminish the strength which is otherwise accorded to the position of the mayor. The result is that in France and Italy the mayor has actually become the more important factor in the city government, while in the United States much of the benefit which might be secured from a strong mayor is as a matter of fact not secured. In both France and Italy the chief city executive may be suspended and removed from office by the central government. In the United States also the power to remove the mayor for cause is sometimes given to the state government. In Germany the members of the city executive may be removed only as the result of conviction for crime or the judgment of a disciplinary court.

Relation to city officers. The relation of the chief executive to the other municipal officers over whose actions he has more or less power of direction differs very greatly in the different countries. Here again England and Germany seem to be the only countries which have been thoroughly logical in their treatment of the question. In England the council, not the mayor, has the powers of appointing, removing and directing all municipal officials. In Germany, on the contrary, the executive, with certain exceptions, appoints, removes, so far as any administrative authority may remove,[1] and directs the municipal officers. In Germany, in the cities having an executive board it is true, however, that the council elects, subject to the approval of the central government in the case of the professional members, the members of the executive board. In France and Italy, while the council elects the deputies or assessors and general managers or directors, i. e., the heads of departments, when it elects the mayor and for the same term, the mayor, except in the case of the directors of the various public utilities operated by the cities in Italy,[1] apportions their duties among them and thus puts them in the position which they actually occupy in the municipal administration as well as directs their actions, but may not remove them from office. In the United States the ordinary rule is that the heads of the departments are appointed by the mayor and approved by the council. In some cases, however, particularly in the case of the officers in charge of the municipal finances, the heads of departments are elected by the people, while in many of the larger cities we are making our plan more logical, in that we are giving the mayor the absolute power of appointing the heads of the municipal executive departments. As a general rule, in the United States the mayor may remove the appointed heads of departments only with the approval of the council, though the tendency in the larger cities is to vest in him the absolute power of removing them. Where the mayor has unlimited powers of appointment and removal it may be said that he has the power of direction and supervision, and is thus made responsible for the administration of the city.

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[1] In Germany office is regarded as a vested right of which the incumbent may be deprived only as the result of a regular trial.

Judicial functions of mayor. Finally, attention should be called to the fact that the mayor in England and the United States, particularly in the smaller cities of the latter country, discharges a few judicial functions. Thus in England the mayor in office as well as his immediate predecessor is a justice of the peace, though it would appear that he seldoms acts. In the United States the mayor is generally a magistrate, and while he seldoms acts in the larger cities, in the smaller cities he still has minor civil and criminal jurisdiction, and very commonly exercises his judicial powers. These powers would seem, however, to be a relic of the past, rather than a forecast of the future, and it is probable that the future will see a considerable diminution of them.

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[1] *Infra*, p. 353.

When we finish our study of the council and the executive, we really, with the exception of the United States, almost finish the description of the municipal institutions, so far as they have been regulated by the statute law. This is due to the fact that the council has the organizing power in most countries of the world outside of the United States, and that, as a result, the detailed organization is a local matter regulated by council ordinance and is in a continual state of change.

Municipal civil service. But while this is true, our study of municipal institutions may not stop here. For it is largely as a result of the detailed organization and of municipal custom that municipal government is good or bad. As Dr. Shaw,[1] says of Paris, "There can be no comprehension however faint of the government of Paris which does not take into account the superb permanent organization of the civil service machine. It is to this *tertium quid* that one must look if he would discover the real unity and continuity of the administrative work of the Paris municipality. Prefects may come and go, ministers may change with the seasons and municipal councils may debate and harangue until they make the doings at the Hotel de Ville a by-word for futile and noisy discussion, but the splendid administrative machine moves steadily on. Herein lies the explanation of much that puzzles many foreign observers who cannot understand how to reconcile the seemingly perfect system of French administration in all matters of practical detail with the rapid and capricious changes in the highest executive posts." What is here said of Paris is true of every city in the world. It is the way in which the administrative force of the city is organized and does its work that makes municipal administration efficient or inefficient.

What now are the qualities which this administrative force should have in order that the best government may be secured, and how has the attempt been made, if it has been made, to secure the best government?

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[1] "Municipal Government of Continental Europe," p. 27.

The qualities desired in a municipal administrative force are two in number: they are amenability to popular control, and administrative efficiency. Amenability to popular control is necessary, else the wishes of the people will be incapable of realization. Administrative efficiency is necessary else what is done will not be well done. But while amenability to popular control is dependent upon precarious tenure, administrative efficiency is dependent upon actual permanence of incumbency. The two desired qualities seem therefore to be somewhat inconsistent. This inconsistency, further, is not a seeming but a real inconsistency and the natural result is that it is usually the case that one of the two qualities so desired in the municipal administrative force is, as a matter of fact, somewhat sacrificed to the other. This is particularly true where the attempt is made to secure the desired result by means of legal provision. Thus in Germany, where it would seem that what is most ardently desired is administrative efficiency, the tenure of municipal officers is so protected by law and those officers are given such a control over the actions of the popular bodies in the city government that an effective popular control over the actual administration of municipal government is very difficult of exercise. German municipal government is largely a government by permanent experts subject to a more or less effective popular control. In the United States, however, where what is sought is a popular control, the terms of the important municipal officers are so short, whether as a result of legal provision or custom, that permanence of incumbency is well nigh impossible and, while popular control is probably secured in the more highly developed forms of American city government, the administration is comparatively inefficient. Experts are conspicuously absent in the system.

In England, on the other hand, little attempt is made by law to secure either amenability of municipal officers to popular control or administrative efficiency. Everything is left to the council and public opinion, and in recent years both qualities have been secured in a high degree.

How, now, may the desired ends be secured? Before answering this question let us consider somewhat in detail the organization of the administrative force as it exists in the various countries whose municipal institutions we are studying.

In England. Let us begin with England, which has a more clear-cut, logical system than any other country. In England the council divides itself into committees each of which has under its jurisdiction some one branch of administration. The Municipal Corporations Act makes provision for one such committee, viz., the watch committee, which under the chairmanship of the mayor has the supervision of the police.

The recent Education Act of 1902 also provides for an education committee which is to supervise the schools of the city and which, different from the other council committees may be composed, at least so far as concerns a minority of its members, of persons not members of the council.[1] On each of these council committees there are a number of aldermen and councillors. These committees are practically the heads of the different executive departments, which have been formed by the council in the exercise of its power to organize the city administration, and have power, subject to the approval of the council, in which the real power rests, to appoint, dismiss and direct the officers of the department. The membership of these committees is comparatively permanent, as has already been pointed out.

It is through this committee system that the whole city administration is rendered amenable to popular control. The people control the council, the council controls the committees, and the committees control the departments. The control which the people exercise over the council is so organized, however, that popular control is somewhat subordinated to administrative continuity, for, it will be remembered, the council is only partially renewed at each election, one-third of the councillors being then changed, while only half of the aldermen change every three years.

Permanence of official tenure. Under each committee there is the regular routine administrative force. This may be divided into a higher and a lower administrative force. Such a division is not, however, made by law, but results from the usages of the council and its committees. The higher officers, such as the borough surveyor, equivalent to the American engineer-in-chief of public works, the town clerk, similar to the American corporation counsel but with wider powers, indeed he is in many cities the more or less expert head of the entire municipal administration,[1] the health officer and inspector of nuisances, equivalent to similar officers in the American city, have by law a tenure during the pleasure of the council, and no provision of law determines their qualifications, which are fixed by the council. What has been said with regard to the higher officers may be repeated with regard to the lower officers. No attempt has been made by law to apply to them the merit system introduced by the civil service reform movement.

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[1] A list of the committees in the cities of Manchester and Leeds is given by Fairlie, "Municipal Administration," p. 400.

The result is that no attempt is apparently made to secure by provision of law administrative efficiency or permanence of tenure. These are, however, secured by public opinion. The entire administrative force is out of politics, not merely national but also local politics. The higher officials are chosen because it is believed they are qualified to perform their duties and not because they have rendered political service; and inasmuch as their tenure, while nominally during the pleasure of the council, is really during good behavior, they form a highly educated, permanent professional expert force, which under the general direction of the council and the immediate supervision of the council committees carries on the work of the city unaffected by any changes which may arise in the composition of the council or its committees. The same may be said of the lower administrative officers of the city. In England, as in Germany, experts play an important rôle in the city government, but in England their position is not legally protected as in Germany and they are, contrary to German practice, rather the subordinates than the peers of the non-expert elements.

Under this scheme of government both the qualities so desirable in an administrative force, viz., amenability to popular control and administrative efficiency, are secured. But an enlightened public opinion rather than the law is responsible for the attainment of these objects. It is true, however, that the development and exercise of such an opinion are greatly furthered by the general scheme or municipal organization. The greatest hindrance to its development and exercise in the United States is to be found in the influence which national political parties exercise over city government.

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[1] Hirst, "Municipalities in England," Schriften des Vereins für Socialpolitik, Vol. 123, p. 20.

Further, the British principle of concentrating all municipal power in a popularly elected council makes it unnecessary that the popular control shall be exercised in concrete cases over any of the distinctly administrative officers in the city. The municipal officers, who are under the direction of the council committees, possess so little freedom of action and discretion that it is not necessary in order to realize the wishes of the people as expressed by the council for the popular control to be exercised regularly over them.

Council committees. Finally, the fact that the department heads, i.e., the council committees, are composed of members of the council serving without pay and not getting their livelihood out of the emoluments of their official positions, provides for the existence and continuous exercise of a popular control over municipal administration, which, under the social conditions existing in the ordinary British city, is in the hands of representatives of the intelligent and public-spirited classes of the urban population. There being no salary attached to council membership, no one seeks election to the council from motives of pecuniary gain. The honor and social prestige attached in the public estimation to the position are sufficient reward for the time devoted to the work. The time devoted to municipal work also is comparatively so small as a result of the committee system, which, in its turn, is based on a sub-committee system,[1] that even busy men can afford to serve without pay on the borough council and do their share of committee work. The extension of the sphere of activity of the cities through their engaging in municipal trading is, however, in some British cities so increasing the demands on the time of council members that, if we may believe common report, the work of these council committees is becoming somewhat perfunctory in character, and the influence of their professional expert subordinates is increasing in importance.

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[1] In Leeds, for example, several of the committees are divided into as many as four sub-committees, while almost all the committees are composed of at least two sub-committees; Hirst, "The City of Leeds," Schriften des Vereins für Socialpolitik, Vol. 123, p. 145.

In Germany. The country whose municipal organization most closely resembles in this respect that of Great Britain is Germany. Here we find two forms of executive organization, the one called the burgomaster, the other the board, form. The only real difference between the two consists in the fact that the various higher administrative officers are, under the first, rather the subordinates, under the second, rather the colleagues of the burgomaster. That is, in the burgomaster form they must do as they are told by the burgomaster, while in the board form they participate in the determination of questions of policy, although, those questions once determined, they are to act under the general direction and control of the burgomaster. In both cases these higher administrative officers are either paid and professional or unpaid and popular, the number of the latter being determined by local ordinance. The qualifications of the professional officers are laid down in the law and provide for both theoretical professional training and practical experience; the qualifications of the popular officers are practically the same as those required of council members. Both classes of officers, as well as the burgomaster, who is a paid professional officer, are elected by the council for long terms, generally twelve years, longer, sometimes for life, in the case of the professional than in the case of the popular officers. Reappointments also are the rule. The choice of the council in the case of the professional officers must be approved by the central government. The burgomaster or the executive board is the chief executive and appoints the subordinate administrative officials. For these a merit system of appointment has been provided by law which lays stress as in the case of the higher professional officers both on theoretical fitness, as evidenced by training and examinations, and practical experience, as evidenced by service in some city department without pay. Often the burgomaster and the professional members of the executive board in the larger cities, have, prior to their appointment, served in similar positions in similar cities. They are chosen because they are presumed to be expert, and often a city in need of such officers inserts a notice to that effect in the newspapers, as is also done in England. Provision is also made for giving preference in appointment to the lower positions to honorably discharged non-commissioned officers of the army. This is particularly true of the city police forces, which thus very commonly have had a military training. Permanence in tenure in both the higher and lower service is secured through the absence of all power of arbitrary removal. Discipline is secured by the recognition of a disciplinary power, which includes the power to impose fines and even arrest, as vested in the chief executive. Pensions are commonly granted to city officers after a stated term of service.[1]

Administrative boards. To secure a greater popular control over the administration there is formed for each branch of the city's business a board or commission composed of one or more of the higher administrative officers, of members of the council and of citizens not members of the council or officers of the municipal administration. This committee under the guidance of a professional officer and the control of the executive attends to the business of some one branch of the city's administration. Thus, for the schools there is a school board under the presidency of a professional school commissioner (*Schulrath*) and composed of the various elements mentioned, which attends to the physical administration of the schools, their pedagogical side being under the control of the school commissioner, acting under the direction of the State Department of Education. What is true of the schools is also true of the support of the poor. In this branch of administration we have a good example of the way in which the German system attempts to make use of the voluntary work of its citizens. It is quite common in the German cities, of which Elberfeld is a shining example, for the city to be divided into districts. In each of these districts there is a voluntary commission which attends to the management of the poor relief under the general supervision of the city board of charities in somewhat the same way that charity organization societies do their work in American cities. In some of the German cities there are under the direction of the local committees a large number of volunteer unpaid workers. In Magdeburg, e. g., in 1904, there were 602 unpaid officers who aided the city administration in its work.[1] Of these 516 were occupied in the poor administration.[2]

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[1] For the position and powers of the German city executive, see Bishop, "The Burgomaster," Am. Pol. Sci. Review, Vol. II, p. 396; and Munro, "The Government of European Municipalities," p. 179, et seq.

This system of boards, largely of a non-professional character but acting in conjunction with and under the guidance of professional higher administrative officers and aided in the detailed administration by a large number of unpaid workers, combined with the powers of control possessed by the council over the work of the administrative force, does much to make the German system, which otherwise lays such stress upon permanence of official tenure and expert management, amenable to popular control. This combination of lay and professional officers in the same authority is peculiar to Prussia and underlies the whole local government system. It is productive of great efficiency and makes possible the occupation by the city of a very wide field of activity without making undue demands on the time of the non-professional popular officers, of whom there are so many in the city civil service.

In France and Italy we find a system which departs even further from the English system. Here the higher administrative officers, that is those who correspond to the committees of the British borough council, are called adjuncts or deputies in France and assessors in Italy, known in Italy in their collective capacity as the *giunta*. These officers are chosen by the council from its own members at the same time at which it elects the mayor and for the same term as the mayor and are like the mayor unpaid. Their number varies with the size of the city, being fixed by the law regulating municipal corporations. The mayor as the repository of the entire municipal executive power distributes the business among them as he sees fit and always has at least a nominal control over them, though it would seem that he may not remove them from office. An exception to this general system is to be found in the cities of Italy which have since 1903 entered the field of the operation of public utilities. There is at the head of each such branch of administration in these cities a director or general manager chosen by the council from outside its membership by competition. The general manager is aided by a council chosen in like manner.[1]

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[1] Schriften des Vereins für Socialpolitik, Vol. 117, p. 181.

[2] Ibid., p. 183.

The general Franco-Italian system resembles the English system in that the heads of the departments are thus usually members of the council. It resembles the German system in that these heads of departments theoretically act in the discharge of their duties independently of the council and under the direction of the chief executive.

It is the custom in France for the council to appoint committees like the English council committees, of which the deputies are the real chairmen, but these committees are merely advisory and have no positive administrative functions to discharge.

So far as the administrative force is concerned the legal conditions are much the same in France and Italy as in England, that is, the law does not lay down the qualifications of municipal officers but leaves that matter to the mayor, in whom is vested absolute power of appointing, removing and directing almost all municipal officers except that in certain cases, among which are the police, the central government reserves certain powers of control.

Permanence of tenure. But in a number of the French cities, of which Paris is a marked example, methods of appointment have been provided which lay great stress on examinations and previous training, and as a matter of fact, service, whether because of this merit system of appointment or because of an enlightened public opinion, is quite permanent in character. Admissions to the lower grades of the municipal services "are based upon appropriate and impartial examinations. Promotions are made upon approved principles from within the ranks.

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[1] *Infra*, p. 353.

The system is not so mechanical as to preclude the recognition of special talent, but it affords scant opportunity for injustice or favoritism. The higher grades and branches of the public service draw upon the splendid series of municipal and national technical and professional schools which train men for every special department of municipal activity. Removals from service are not made upon arbitrary grounds, political considerations have nothing to do with municipal employment. Faithful continuance in the service is rewarded ultimately by retirement on life pensions. There is every incentive to fidelity."[1]

The Franco-Italian system in and of itself is not framed with the idea of securing either great amenability to popular control or great administrative efficiency. The long term of the council, four or five years, makes it impossible for the people to exercise a continuous control such as may be exercised in the English system of partial renewals and annual elections. Few if any citizens from outside the council are called in as members of commissions and boards, as is done in the Prussian cities. The mayor and deputies once elected by the council are independent of it and the failure to make legal provision for permanence of tenure in the subordinate administrative force leaves administrative efficiency to be secured by the same public opinion by which the popular control can alone be secured.[2]

Finally, the Franco-Italian system abandons absolutely all idea of administrative boards and relies on single-headed departments, as they are sometimes called, for the council committees are nothing but advisory committees which in addition to giving advice to the mayor and his subordinates inform the council of the condition of the different departments. It is true that in both France and Italy most of the heads of the departments, that is the deputies and assessors are, like the chief executive, unpaid, but the control which they exercise must be of a somewhat perfunctory character as no one man has the time, while pursuing some other occupation, to exercise the same sort of supervision over the affairs of the department assigned to him that can be exercised by a board each member of which gives only a small portion of his time to the work. Dr. Munro thus says: "In general it would not be too much to say that the cities of France are administered very largely by a corps of permanent municipal officials acting under a broad range of authority committed to them by the mayors."[1]

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[1] Shaw, "Municipal Government in Continental Europe," p. 31. For the position and powers of the French mayor and executive officers, see Munro, "The Office of Mayor in France," Pol. Sci. Qu., Vol. XXII, 645; "The Government of European Municipalities," p. 85, et seq.

[2] Almost the only instance in which the courts have interfered with the mayor's power of removal was where the record showed that it had been used for a corrupt purpose. See Revue Générale d'Administration, 1901, Vol. I, p. 167.

In the United States we find a system radically different from any of those which we have considered. This system is characterized by the complete separation of the mayor and executive departments from the council. The number of these departments, their functions, their term of office and the method of filling the office of head of department, all these matters are as a rule fixed in considerable detail by the provisions of the municipal corporations act or charter. Only the minor details may ordinarily be fixed by the council. The city executive departments not only are separate from the council, but for quite a long period in our history they were also in many instances separate from the mayor as well. The lack of concentration resulting from such a system brought it about that at one time very large discretionary powers were vested in the heads of departments in most cities of the United States. This made it necessary that frequent changes should be made in the official force, particularly in the case of the heads of departments, for only through the exercise of the power of appointment, where he possessed it, could the mayor exercise any influence over the heads of departments. These frequent changes were further encouraged by the influence which national parties have so long had over municipal politics in the United States.

Lack of permanent tenure. This board system of municipal government, as it existed in the United States about the year 1880, was of such a character that it insured neither amenability to popular control nor, except in so far as it provided for a reasonable administrative continuity, administrative efficiency.

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[1] *Political Science Quarterly*, XXII, p. 662.

City elections were largely decided as an incident of national and state politics, and the frequent changes in the official force with the resulting lack of permanence brought it about that administrative efficiency was difficult of attainment. Since 1880, however, the attempt has been made to concentrate municipal administration in the hands of the mayor, to whom are given very generally in the later charters in the larger cities the powers of appointing and removing and the resulting power of directing the heads of the city executive departments.

While this change has resulted in subjecting the municipal administration to a greater popular control, it has not succeeded in producing that permanence in the higher ranks of the administrative force, particularly in the heads of departments, which is necessary for administrative efficiency. Each incoming mayor as a matter of course appoints new heads of departments, as he had done prior to the time when the change in the position of the mayor had been made, and in so doing is supported by the prevailing public opinion.

What is true of the higher administrative officers is also true of the lower. The only general exceptions which are to be found are the teachers, the police and the members of the fire department, who are often given a permanent tenure. Where the merit system has been introduced as a result of the civil service reform movement, which is the case in only a few of the states, among which may be mentioned New York and Massachusetts and in quite a number of the cities outside of these states, the attempt has sometimes been made to give to the lower officers a tenure similar to that of teachers, policemen and firemen.

The law is generally silent not merely as to the tenure of the lower officers. It is silent as well as to the qualifications, both of the higher and lower officers. The only exception is to be found again in the cities which have adopted the merit system, and here the qualifications which are required of municipal officers affect only the lower grades of the service. Few provisions of law attempt to secure permanent expert service. Even the commission system of city government, the latest development in the United States, makes little or no such attempt. Public opinion is not generally sufficiently enlightened to insist upon expert service. The result is that probably less reliance is placed on the expert in the American than in any other system of city government. Little or no attempt is made, as in Germany, to secure the services of unpaid volunteer workers.

The desire to concentrate all executive power in the mayor in order to secure that responsibility for the municipal government without which popular control cannot exist, and also to secure greater administrative efficiency, has resulted in the very general adoption of what are called single-headed departments.

Boards and single commissioners. The desirability of single-headed departments has come to be regarded as unquestionable, and it is almost heretical at the present time to express the conviction that the board form is preferable. At the same time it will be remembered that both England and Germany, where city government on the whole is more successful than elsewhere, lay great emphasis upon the board form of administrative departments. While, therefore, a conviction of the desirability of the board form may be regarded as heretical when looked at from the viewpoint of the average American municipal reformer, it cannot be considered at all heretical when considered in the light of continental European and English municipal conditions. It is therefore quite proper to consider somewhat in detail the reasons in favor of the board form of organization.

The reasons in favor of the board form are in the first place the greater permanence of tenure in the heads of the city executive departments which it assures. This permanence results from the fact that boards may be so organized, as indeed they are generally organized, as to be partially renewed at any one time. The members are given such a tenure and term of office that all of them do not leave office at the same time.

A further reason for the adoption of the board form is that it is the only form of organizing the executive departments of a city which really makes permanently possible popular non-professional administration. The work in practically all executive departments of cities of any size is so great in extent and so complex in character that it can be properly attended to by one man only on the condition that he devote his entire time to it during his term of office. Certainly no one man can properly attend to the work of a municipal department unless he subordinates all other work of a private character to the performance of his official duties. Now no man can afford to devote himself for any length of time to the performance of official duties so absorbing, unless the emoluments of office are quite large and the experience derived from the performance of official duties is going to be of aid to him in his future career.

The result is that either a permanent official class must be developed under the single-headed system, or else the offices are monopolized by the well-to-do classes of people. The latter result is not believed in the United States to be consistent with a popular democratic government. The former means either a permanent professional bureaucracy or that the offices are filled by a set of men who make politics their profession, obtaining their livelihood from the emoluments of the various offices they fill, one after the other. Because they do not occupy any of the offices for any length of time and because they have not received any adequate training they are really not competent to fill these offices.

This last result is what has followed in the average American city, the adoption of the single-headed form of organizing the executive departments. It is unquestionably true that the majority of important offices in the city of to-day in the United States are filled in the long run by what may be termed "political hacks." By this term is meant men who get their living out of politics, who, if they do not resort to other and illegitimate methods of obtaining money and are not well-to-do, must get their living out of the salaries which are attached and must be attached to the offices. They are in fact the only men to whom we can look under the present American system to take office permanently.

Such are then almost inevitably the results under present American political conditions of the single-headed system of municipal executive departments. It would be possible by attaching large salaries to the important offices in the large cities and by making the terms of the office much longer, preferably during good behavior, to develop a really professional service. If single-headed departments are to be retained—and that the system has much in its favor cannot be denied, that is what should be done. If it were done, it would be possible to demand of the incumbents the previous training necessary to fit them for the arduous and complex duties they are to perform. What is actually at the present time the case, would be frankly recognized, viz., that these positions must be held by a professional official class, and much would be done to elevate the plane of that class, as regards both character and ability.

Such a permanent professional administration, however, would not be so amenable as is desirable to popular control. No system of administration is ideally a perfect one which is entirely controlled by a professional official class. Municipal administration is so complex and so wide in extent that it is extremely doubtful whether under any system of organizing the mayor's powers, the influence of a mayor serving for a short term only and depending upon permanent professional heads of departments for the execution of the municipal policy in its details would be great enough to make the administration sufficiently amenable to popular control. Such a popular administration can be obtained only through a board system in which the members of the various boards are not paid large enough salaries to make official positions tempting as a means of livelihood. It is indeed probably better, as is done in England, Germany, France and Italy, to attach no emoluments whatever to these positions in order that the motives of those who assume them may be absolutely unmixed. No emoluments being attached to these positions, persons desiring to obtain a livelihood out of political life would not be attracted to them provided some method were adopted of preventing the incumbents of such positions from making money in illegitimate ways.

Unpaid service. The board system thus makes it possible for the business and professional classes of the community to assume the care of the public business without making too great sacrifices. Compulsory service, as is the rule in Prussia, might be introduced. Such a provision for compulsory unpaid service would not be unjust, for the work of almost all departments is of such a character that it can be subdivided and distributed among the various members of the boards at the head of the departments. The work demanded of the members of these boards would be much diminished if proper methods of filling the higher subordinate positions were adopted. If, for example, the public works department of the city were placed in the hands of a board having under its direction a competent engineer or engineers with permanent official tenure who should attend to the details of the purely technical work, there would be left for the board itself merely questions of policy to determine, which could be given to individual members of the board to attend to with the aid of the permanent professional force. The individual board members, by the expenditure of a comparatively small amount of time, that is as compared with what would be demanded of one man responsible for the entire work of the department, could arrange all preliminaries which must be attended to before any matter was decided by a full session of the board. Such full sessions could be held often enough to secure proper attention to the work of the department, without making it necessary for any member of the board, even if account is taken of the individual work he would do, to devote all of his time or even a large part of his time to public business to the detriment of his private affairs.

Such a method of organizing the heads of municipal departments not only makes the administration of the municipal policy popular in character but it also has the great advantage of awakening and keeping alive local public spirit. The mere fact that it calls into public service a large number of men who are not in public life for what they can get out of it tends to form numerous centers from which radiate the best sort of political influences—influences which are continuously at work for the amelioration of municipal conditions.[1] If combined with such a method of organizing the heads of municipal departments there were adopted proper methods of appointing, not merely the clerical and ministerial forces of the departments, but also the higher subordinates who ought to have a special and technical training, the administration would be popular and efficient and would encourage the development of public spirit.

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[1] As to the general effect on city government of the existence of numerous unpaid officers, see Schriften des Vereins für Socialpolitik, Vol. 117, pp. 283–286.

Finally, we may draw a lesson from American experience. If an examination is made of the ordinary method of organizing the educational administration in the American city, which must be regarded on the whole as one of the most successsful branches of American municipal administration, it will be found that the board system is adopted. At the head of the administration of the schools is to be found a school board or board of education, whose members are elected or appointed in various ways. Under the board, which concerns itself with the general policy of the schools, is to be found a more or less professional force with the superintendent of schools at its head, which under the direction of the board of education conducts the common schools. This system has had the result of allowing state and national politics to have much less influence over the schools than they have over the other branches of city administration. It has also had the effect of keeping alive the interest of the people in the schools, which are unquestionably considered one of the most important branches of municipal administration, and in the proper maintenance of which the people of almost every city of the United States take the greatest pride.

It is also to be noticed that often in those cities in whose organization the single-headed system predominates, when any great public work is to be undertaken for whose successful prosecution a continuous policy is desirable, the work is entrusted not to the single head of the department of public works, but to a special commission or board whose members have long terms of office.

But, notwithstanding all that has been and may be said as to the advantages of boards, we cannot fail to notice that the present tendency in the United States is away from the board form and toward the single-commissioner idea, particularly in the larger cities where the work of the departments is most complex. Even in the case of schools this tendency is evident. What seems to be desired is administrative efficiency and the power of quick action. It may be also that the social conditions of American life are not such as favor the board form. It is certainly true that the whole industrial and commercial organization of this country is based on the one-man idea rather than on the board idea. It is the railroad president, the corporation president, and the bank president, rather than its board of directors, who gives its tone to the railway, the manufacturing corporation, and the bank. What is true of the industrial organization is in like manner true of our educational and political organization. It is the college president and the party boss who directs the college and controls the party. Such being the case, it may well be that we must reconcile ourselves to the single commissioner in city government, notwithstanding all the faults by which the system is accompanied. And it cannot be denied that these faults are, to a degree at any rate, offset by the greater concentration of responsibility and greater powers of quick action which it must be admitted are present in the case of a single commissioner. It is, however, much to be regretted that boards find such unfavorable conditions in the United States. For, as a result of their absence, we are deprived of the possibility of securing some of the most beneficial characteristics by which a system of city government may be distinguished.

In the United States, contrary to the conditions which exist in other countries, neither positive law nor public opinion has in the past consistently or intelligently attempted to secure either amenability to popular control or administrative efficiency. But, within recent years, as a result of the concentration of the executive power in the mayor, greater amenability to popular control is being secured. The adoption of the merit system has done something also to secure administrative efficiency. What has not been secured by law has not been secured by public opinion, which until very recently has not been at all enlightened. This lack of enlightenment has been due, however, to the failure on the part of the people generally to perceive that municipal questions should be decided upon their own merits, and that the fortunes of cities should not be sacrificed in the interests of the state and national political parties. The necessity of building up and maintaining political parties has been so great that it has blinded the people to the evil of the government of cities by national parties. Of late, however, a reaction has set in, and considerable progress has been made in building up a public opinion sufficiently strong and sufficiently enlightened to repudiate the practices of the past in this respect.

City administrative districts. Before closing what is said as to the organization of the city executive, a word at least should be said with regard to the districts into which the city is divided for the purposes of its administration. Almost every one of the departments in a city of any size feels the need of dividing the city into circumscriptions for the purpose of discharging conveniently the functions intrusted to it. Thus, the police of the city cannot keep order in a city of any size where they are obliged to act from a single center. The city is usually divided into precincts, in each of which is a center of police activity. What is true of the police is true of the fire department, the street-cleaning department, the public works and other departments. In addition to the purely administrative districts into which cities of any size must be divided, there are other districts which must be provided, such as election districts for both state and municipal elections, and judicial districts.

Of course it is true that the needs of each department, whose needs are thus considered, are somewhat different from the needs of every other such department. If these needs are the only thing worthy of consideration, each department should be at liberty to district the city to suit its own convenience regardless of the other departments and branches of the city government. But it is also true that the interests of the city as a whole deserve consideration, and that if the method of districting the city has an important influence on those interests, and particularly upon the political capacity of the people, considerations of administrative convenience should give way. Now it is unquestionably true that the district system of a city does have an important influence on the political capacity of the people.

Attention has been called to the fact that one of the things which make city government inherently difficult, is the lack of neighborhood feeling, which seems invariably to be produced by city life. If each branch of the city government, and each city executive department, forms districts to suit its own convenience merely, it is almost a certainty that there will be almost as many series of districts as there are branches of city government and city executive departments. The result is that such a neighborhood feeling as may exist is disintegrated, and that it becomes impossible, so long as this administrative diversity continues, for such a neighborhood feeling to develop. If, on the other hand, care were taken to make the election districts the same as the judicial districts and to cause these to conform, in some way, to the police, fire and other districts; if the district court-house, the fire engine-house, the police station-house and even the school-house in given parts of the city were situated from the point of view of city geography near each other—were placed, perhaps, in or around a small play-ground or park—it would be possible to develop civic centers which would tend to encourage the development of neighborhood spirit. It is quite true that the convenience of the departments might be interfered with, but the loss suffered by the departments would be more than compensated for by the development of neighborhood spirit, and in many instances as well by the greater convenience of the citizen, who would find that his business with the city government could be conducted with greater ease than under conditions where the city .districts bore no relation to each other. Under the plan which has been outlined, of course the districts would be more permanent than at present, while the civic centers which might develop would, of necessity, be absolutely permanent. The changes of population which are going on so continuously in the city would make the problem of district representation a different one from what it is where the districts are not permanent but are changed to suit the changes of population. The problem would not, however, be one of great difficulty, for, instead of establishing single districts as at present, it would be possible to make provision for districts whose representation would vary with their population.

The plan which has been outlined is one which to a large degree has been adopted in Paris. Paris is divided into twenty districts, each of which has a civic center—the mairie—at which are found the office of the mayor—in this case a district and not a city officer—generally a city library, and the local office of the charities department. The mairie itself is usually situated in a small open space or park. The twenty districts, in addition to being thus administrative districts, are also election and judicial districts. In this case, notwithstanding their differences in population, they are equally represented on the city council. Somewhat similar are the conditions in Germany where the large cities are divided into districts, with a district officer at the head of each, who is the subordinate of the burgomaster. So far, however, in the United States little attention seems to have been given by the city governments to this important matter, and the convenience of the administrative departments alone has been considered. The result is that an opportunity has not been availed of either to preserve or to develop neighborhood feeling, or to secure an architectural effect which would render city life much more attractive than it is at present.

CHAPTER XII

POLICE ADMINISTRATION[1]

Definition of police. The word "police" has been used in the past and is now used in quite different senses. Originally it meant all government. Later it was used to indicate what is now called internal administration, that is, all administration not relating to military, financial, judicial or foreign affairs. Finally it has come to mean that part of the administration of internal affairs which attempts to prevent the happening of evil and to suppress violations of the law. This is the sense in which the word is most commonly used now-a-days, though the habit of referring to the officers whose main duty is the preservation of the peace as policemen has caused it to be thought that police is confined to the preservation of the peace.

Using the term police as indicating that governmental function which is exercised in order to preserve the public safety through actions somewhat repressive in character, we may divide police functions into three classes, to which we may give the names of legislative, judicial and administrative.

Legislative police functions are discharged by the issue of general ordinances in the interest of the public safety. This matter has already been discussed in what has been said relative to the powers of city councils. All that need be said here is to call attention to the fact that the local police ordinance power is in England, the United States and Italy delegated by the state to the city, and as a rule is exercised by the city council; but that in France and Germany it is regarded more as a state than as a local function and when exercised by a local officer is exercised by him under state control, and that it is not vested in the city council but rather in the executive authorities. In a number of the cities in the United States authorities other than the council and executive in character discharge these legislative police functions.

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[1] Authorities: Fairlie, "Municipal Administration"; "Essays in Municipal Administration"; Simonet, "Droit Public et Administratif"; De Grais, "Verfassung und Verwaltung"; Mascher, "Polizeiverwaltung"; Morgand, "La Loi Municipale"; Von Arnstedt, "Das Preussische Polizeirecht"; Illing-Kantz, "Handbuch für Preussische Verwaltungs-Beamte"; Berthélemy, "Traité du Droit Administratif"; Eaton, "Government of Municipalities."

By judicial police we mean the punishment of violations of police laws and ordinances. The functions of judicial police resemble very closely the functions discharged by the criminal courts; and it is often the case that they are discharged by the lower instances of the criminal courts, or that police courts are invested not merely with police functions but with minor criminal jurisdiction as well. We shall, therefore, in our discussion of judicial police touch also upon the criminal judicial functions which are in exceptional cases discharged by municipal officers.

By administrative police we mean the protection of the public safety. While one of the main functions of administrative police is the preservation of the peace and the maintenance of order, the word has a much wider meaning. Under this heading we shall discuss as well sanitary police, building police and police of public safety generally. We shall take up first judicial police and shall first study the conditions as they exist in England and in the United States.

City judicial functions. Whatever may have been the original powers of English cities in the matter of justice and judicial police, with the development of the royal courts and the justices of the peace, cities and city officers as such lost all such functions. It is true that persons who in other capacities may have acted as city officers did in the larger cities of England discharge these functions; but they did so because a special commission of the peace had been granted to them by the Crown. The Municipal Corporations Act of 1835 preserved this general system and secured to the Crown the right of appointing all the officers except the mayor and the ex-mayor, who in the cities exercised these judicial and police functions. In order to understand the system a word explanatory of the general judicial police system throughout England is necessary.

In every county there are officers exercising judicial police functions, called justices of the peace. They act, roughly speaking, in two capacities. They are at the same time members of a county court, called the court of quarter sessions, and act, either singly or in pairs, in courts which are called petty and special sessions. The county court of quarter sessions is in the first place a court of appeal for minor criminal and administrative cases, and in the second place a court of original jurisdiction for the more important criminal cases not of a capital character. The courts of petty and special sessions are courts of first instance for minor criminal, police and administrative cases and the justices acting singly in petty sessions have police jurisdiction and act as committing magistrates. Now each of the justices has, unless some exception is made, jurisdiction of the entire county, and the court of quarter sessions has similar jurisdiction. If no exception is made, if no *non-intromittant* clause, as it is called, is inserted in the commissions of the ordinary county justices there can be no special judicial police organization for a borough. But each borough will be in the jurisdiction of the county justices who will have the same powers in the urban as in the rural parts of the county.

But very commonly such a *non-intromittant* clause is provided. As a result a borough may have its own justices, or may in addition to having its own justices also have its own court of quarter sessions, in which case the county justices and the county court of quarter sessions will not have jurisdiction within the borough.

In English cities. The present Municipal Corporations Act provides first, that the Crown may, on the petition of a council of a borough, grant to the borough a separate commission of the peace and assign to any persons a royal commission to act as justices in and for such borough, when they shall have, with respect to offences committed and to matters arising within the borough, the same jurisdiction and authority as county justices have for the county, except that they shall not by virtue of a borough commission act on the county court of quarter sessions.[1] These borough justices serve without pay and practically for life, though legally their term is during the pleasure of the Crown.

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[1] Consolidated Municipal Corporations Act of 1882, §§ 156 to 158.

Secondly, the Crown may, on a like petition of a borough council, appoint one or more stipendiary magistrates who shall be barristers of seven years' standing and who shall hold office during the pleasure of the Crown and shall be paid a salary not exceeding, except with the consent of the council, an amount mentioned in the petition asking for the appointment of such magistrate, which amount shall be fixed from time to time by the Crown.[1]

Third, the Crown may, on a like petition of a borough council, grant to a borough a separate court of quarter sessions on such terms as may seem fit to the Crown in Council, and appoint a recorder of the borough who shall be a barrister of five years' standing, shall hold office during good behavior and shall receive a salary not exceeding an amount to be stated in the petition, which amount is fixed by the Crown but may be increased by a resolution of the borough council approved by the secretary of the state. One person may be appointed recorder for two or more boroughs conjointly. The court of the recorder shall have the same jurisdiction, except as to certain enumerated administrative matters, as an ordinary county court of quarter sessions.[2] A borough having a separate court of quarter sessions is freed from most of the county expenses, but has itself to pay all expenses of criminal trials in the borough.[3]

It will be seen from this description that the present system of judicial police, so far as it affects the cities, is based upon the idea that judicial police is a matter of state rather than of municipal concern, but that it may be necessary to modify the general system existing throughout the country so as to suit the conditions in the urban districts by substituting professional paid officials such as stipendiary magistrates and salaried recorders for unpaid popular justices upon whom reliance is placed throughout the country as a whole. The necessity of modifying the details of the general system on account of the peculiar conditions of urban districts, has not, however, had the result of making judicial police a municipal function, in the sense that it is to be discharged by municipal officers. The law is careful to keep the appointment and as well the fixing of the salary of judicial police officers in cities in the hands of the central government, which can thus see to it that a proper salary is provided for professional police magistrates and that persons are appointed who will not permit local prejudices to affect the discharge of their functions.

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[1] Ibid., § 161.

[2] Ibid., §§ 162 to 165.

[3] Ibid., § 169.

In the United States. A study of the development of municipal institutions in the United States shows that the earlier American charters, in accordance with the English ideas of the time, vested judicial police functions in certain of the city officers, namely, the mayor, recorder and aldermen. Thus, in New York these officers were declared by the Montgomerie Charter of 1730 [1] to be justices of the peace, and were to hold four times a year courts of general sessions of the peace with jurisdiction to inquire into, hear and determine crimes and misdemeanors in like manner as justices of the peace in their quarter sessions in England might do. They were also to be justices of Oyer and Terminer and Gaol Delivery and to be named in every commission thereof. Further, they or any of them had power to arrest vagabonds, idle and suspicious persons and commit them to the workhouse or to Bridewell, for a limited period.

In addition to this criminal jurisdiction they had the power to try civil causes, real, personal and mixed, arising within the city. That is, the mayor, recorder and aldermen had, acting either singly or in courts of which the mayor or recorder must always be one, a full criminal and civil jurisdiction within the limits of the City of New York, as a result of this special grant to them of these judicial powers by the Crown.

The exercise of these powers remained unchanged during the colonial period and it is not until 1788 that we find any evidence that the state considered that the administration of justice in the City of New York was a function of state administration which should be attended to by state officers. By an act of 1788, although the mayor, recorder and aldermen were still to have the powers of commissioners of Oyer and Terminer and Gaol Delivery, they were to hold such courts along with one of the justices of the Supreme Court. By acts of 1798 and 1800 the number of terms of the court of general sessions was increased and a police office was established in the city with two special justices and clerks. This police office was apparently established at first merely to aid the mayor, recorder and aldermen who might still act as conservators of the peace. The constitution of 1821 vested the appointment of these special justices in the common council of the city. The constitution of 1846, however, provided for the popular election of all such officers, and by an act of 1848 the City of New York was divided into districts in each of which a police justice was to be elected who should have all the powers and perform all the duties of the special justices for preserving the peace of the City of New York. In this way petty criminal jurisdiction was transferred from the aldermen, mayor and recorder to a police court separate and apart from the council. It seems, however, that the mayor, recorder and aldermen had for a time the powers of magistrates but seldom if ever used them.

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[1] Section 26.

The petty civil jurisdiction of the mayor, recorder and aldermen shared the same fate, though at an earlier date. By a law of 1791 assistant justices were to be appointed in New York City to relieve the magistrates[1] and the aldermen were declared to be incompetent to discharge the minor civil judicial functions. The higher civil and criminal jurisdiction of the mayor and aldermen was taken away from them in 1821. A law of that year recites that "Whereas the Mayor, Aldermen and Commonalty of the City of New York by their petition under their common seal have represented that the permanence and tenure of judicial officers is advantageous to the administration of justice and that the provisions to the effect of those hereinafter contained will be beneficial to the city, Therefore, be it enacted" that the mayor's court shall be changed into a court of common pleas or county court of the City of New York. The judges were declared to be, the first judge who was to be appointed for good behavior by the governor and council of appointment and must, to be eligible, be a counsellor of the Supreme Court of three years' standing, and the mayor, recorder and aldermen. This court could be held by the first judge, the mayor or the recorder and one or more of the other judges.

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[1] These justices have since been replaced by the district court justices who are by the constitution of the State to be elected by the people of the districts.

The same act provided for a Court of General Sessions of the Peace of which the same persons were to be judges. The act then goes on to say that it should be the special duty of the first judge to hold the Court of Common Pleas and of the recorder to hold the Court of General Sessions. The recorder still presides over the Court of General Sessions, but he has lost all of his administrative functions and has become therefore exclusively a judicial officer. The Court of Common Pleas, to which was afterwards added the Superior Court of the City of New York, was with the Superior Court incorporated into the Supreme Court of the First Department of the State by the Constitution of 1894.

The last step in this development was the taking away from the aldermen and the mayor the right to sit as judges. This was done for the aldermen, as far as the criminal courts were concerned, by a law of 1857. The mayor is still by the charter of New York a magistrate, though his powers as magistrate are not defined and he never attempts to exercise judicial powers.

Up to 1846 then, the persons having judicial police functions in the City of New York had been either appointed by the governor or elected by the city council or certain members of the council, that is the aldermen, who were elected by the voters of the city, *ex officio* discharged these functions. The democratic movement of the middle of the nineteenth century had the same effect on this branch of administration as on all others. The Constitution of 1846, as has been said, made these city judicial officers elective by the people. The elective principle worked as badly here as in other parts of the city administration, but being, so far as concerned judicial officers, incorporated into the constitution it could not be abandoned as soon as in the case of the elected heads of executive departments. The heads of departments were made elective in 1849, but change was made to appointment by the mayor and council by the charter of 1853. In 1869, however, the constitution was so amended as to permit of the appointment by some local authority of the judicial police officers in the cities of the State of New York. In 1873 a law was passed which vested the power of appointing police justices, as they were called, in the City of New York, in the mayor, subject to the confirmation of the aldermen. Later the confirmation of the aldermen was made unnecessary. The law of 1873 provided further that the police justices might be removed by the judges of the higher courts. In 1895 this system was reorganized and the principle introduced that police justices must be learned in the law, and might be removed only after an opportunity to be heard in their defence had been accorded to them. The law of 1895 provided further for two classes of justices; police magistrates, who are committing magistrates and have the power to punish for police offences, and the justices of special sessions, who act both as a court of appeal from the summary convictions of police magistrates and as courts of first instance acting with a jury for minor criminal offences. Both the magistrates and the justices of special sessions may now be removed for cause only after an opportunity to be heard.

So far as other cities in the United States are concerned, the practice varies. Sometimes the judicial police officers are appointed by the governor of the state or the state legislature, as in the New England states, sometimes by the city council, as in the Southern states, or by the mayor and council, or by the mayor alone, as in New York, sometimes elected by the people, as in Philadelphia, where limited voting has been adopted, and generally throughout the Western states.

Children's courts. Within recent years the attempt has been made in some of the larger cities of the United States to provide, in addition to the ordinary minor criminal courts, a court or courts for hearing criminal complaints against children. The purpose of providing such special children's courts is to prevent the association of offenders of immature years with habitual adult offenders, and also to prevent the development, in the mind of the youthful offender, of the idea that he is a criminal. Closely connected with these children's courts is the system of probation officers for whom provision has been made in a number of the larger cities. These officers are appointed by the minor criminal courts, very frequently on the nomination of the voluntary associations whose purpose is the amelioration of the lot of the criminal and dependent classes.[1] When a youthful offender, or in some cases an adult first offender, is convicted of a criminal offense by one of those minor criminal courts, the judge by authority of the statute suspends sentence and hands over the person convicted to the charge of a probation officer. In such case the person so placed in charge of the probation officer must report periodically to him. Such reports finally come to the judge who, if they are satisfactory, may in the end discharge the offender. It is said that this method of dealing with first offenders has been successful, particularly in the case of youthful offenders and those who have been convicted of drunkenness.

In France the same distinction which is made in the law of England and the United States is made between administrative and judicial police. The organization of the police courts is fixed by the law of the 16th to the 24th of August, 1790, as amended by the law of the 29th of Ventôse of the year IX. At present each police court is held by a justice of the peace appointed and removable by the President of the Republic. The only qualification is that he must be thirty years of age. In Paris and the larger cities there is one justice of the peace for each district into which the city is divided. In Paris there are twenty of these districts.

In addition to certain minor civil and conciliatory jurisdiction the justice of the peace has jurisdiction in police offences punishable with a fine of from one to fifteen francs and imprisonment for not over five days. He is also to investigate crimes, gather the evidence with regard to them and to commit for trial by the criminal courts persons charged therewith. Appeals may be taken from the convictions of the justice of the peace to the correctional tribunal.

There is one of these correctional tribunals in each city. In the larger cities it may be divided into chambers, some of which are civil and others criminal. In the smaller cities the same judges have civil and criminal jurisdiction as the court is not divided into chambers. In Paris there are seven of such civil chambers and four of such criminal chambers. These courts are composed as a rule of three judges appointed for life by the President of the Republic. They have, in addition to quite a large civil jurisdiction, appellate jurisdiction of the convictions of the justices of the peace and original jurisdiction of the more important police offences punishable with more than fifteen francs fine and imprisonment of more than five days.[1]

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[1] See New York State Library Bulletin, No. 54, p. 461; Report of Conference of Charities and Correction, 1901, Index *sub verbo* "Probation," Annals of American Academy, Vol. XX, p. 257.

In Germany a distinction, similar to the one which is made commonly in England and the United States and universally in France, is made in principle between administrative and judicial police. But in Prussia by an exception administrative police officers, who are appointed either by the Crown or subject to the approval of the Crown by the city council, may impose fines up to fifteen marks and, in case of failure to pay the fine, imprisonment up to three days, subject to an appeal to be taken within a week to the regular courts. If no appeal is taken the decision of the police officer goes into effect.[2]

The more important offences, which in the United States and England would be called police offences but which in Germany are called penal offences, fall within the jurisdiction of the lowest criminal court known as the Amtsgericht. The Amtsgericht is held by a judge appointed for life by the Crown.[3] He acts in a twofold capacity. Acting alone he is a judge of first instance with a minor civil jurisdiction[4] and a committing magistrate.[5] Acting as a criminal court of first instance he has to officiate with two lay assessors or schöffen. These are non-professional unpaid officers, judges of the law as well as of the facts and have the same power as the judge.[6] The assessors resemble very closely an English petit jury, except that they decide questions of law as well as fact. They are selected from a list drawn up by the executive of the city. At the time the list is made up the days the court will sit for the coming year are determined upon and the order in which the assessors will be called upon to act is fixed by lot. The failure of assessors to appear at the proper time is punishable by fine. These courts have jurisdiction of offences which are punished with imprisonment not exceeding three months or a fine not exceeding six hundred marks, or both.[1] In both France and Germany there is attached to these courts as to all criminal courts a prosecuting force. In France the function of prosecuting police offences is entrusted to the commissaries of police who are appointed in communes of over 6,000 inhabitants, on the basis of one for every ten thousand inhabitants by the President of the Republic. It does not seem to be necessary that they shall be learned in the law. The commissaries of police may be removed by the President of the Republic and may be suspended by the prefect of the department in which the city is situated.[2] In Germany officers called state's attorneys are appointed by the Crown for life, one at least for each Amtsgericht, and must be learned in the law.[3]

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[1] Simonet, "Droit Public et Administratif," pp. 130, 131, 142.

[2] De Grais, "Verfassung und Verwaltung, etc., p. 270.

[3] Ibid., p. 223.

[4] Ibid., p. 220.

[5] Von Rönne, "Staatsrecht der Preussischen Monarchie," Vol. 3, p. 339.

[6] De Grais, op. cit., p. 220.

Importance of city courts. The organization and powers of these lower city courts, and particularly of those having criminal jurisdiction, are one of the most important subjects connected with the study of city government. For the great mass of city people come into relations only with these courts. If these courts are corrupt or inefficient, justice for the great mass of those people is but a misnomer. And yet, notwithstanding the transcendent importance of the subject, it has aroused little discussion on the part of the writers on city government, who have very generally confined their attention to the general problem of municipal organization, or have considered in the main the problem of municipal functions.

Now, as a matter of fact, there are few points in which city government in the United States is so unsatisfactory as these city courts. In New York City various methods of solving the problem have been tried, as has been shown. It is, to say the least, very doubtful whether the solution at present reached is a satisfactory one. It is certain, however, that in large cities the worst possible solution of the question is the popular election of the minor judges, particularly the police judges. The evil is aggravated where the election is by districts. The almost invariable result of the election-district system, in the conditions which prevail in our large cities, is the election as police judges of a bad type of ward politicians. Appointment by the mayor has produced somewhat better results, particularly where the mayor has been confined to the appointment of members of the bar of a certain number of years' standing. But the experience of the City of New York goes to show that this method of filling the office may result in the existence of a police bench which is a disgrace to a community which flatters itself that it is either civilized or enlightened. Conditions in New York have been so bad under the system of mayoral appointments that the legislature has been obliged to step in and legislate the entire force of police judges out of office.

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[1] Von Rönne, op. cit., pp. 338, 339.

[2] Berthélemy, "Traité du Droit Administratif," p. 324.

[3] De Grais, op. cit., p. 224.

Indeed, it would seem that local executive appointment or local election of police judges in the larger cities of the United States was not the proper way of filling these offices. State appointment, which is the rule in New England, would seem to have secured better results. The fact that such a method has been, e. g., in the state of Massachusetts, the unchanged rule for a long time would seem to indicate that the evil conditions accompanying all the methods tried in New York have not been present under the method of central state appointment.

Much might be said in favor of the appointment of these officers by the justices of the higher courts. Such a plan is proposed by Mr. Eaton, in his "Government of Municipalities," and, as he points out, has been followed with marked success in the case of the United States Commissioners, who, in the federal system of judicial administration, exercise some of the functions discharged in the cities by police judges, and who are appointed by the United States judges.

In conclusion it may be said that some of the states of the United States are almost the only states which attempt to fill these offices by any method of local selection. In Great Britain, France, and Germany all officers discharging the functions discharged here by police judges are appointed by the central government.

Different conceptions of police. The conception of administrative police in any country is in large measure dependent as to both its character and its content on the ideas which have been and are now entertained in that particular country on the extent of the police power which the government as a whole shall exercise. In general these ideas are two in number. In the first place, among some peoples, of which the English may be taken as an example, the fundamental idea of police power was originally that it consisted merely in the power of repression. Police legislation was conceived of as a body of law which prohibits certain actions regarded as prejudicial to the public welfare.

Opposed to this fundamental English idea was the idea entertained on the continent generally, that the state should, in addition to taking all necessary repressive measures, resort as well to preventive measures. The law was conceived of as a rule of conduct which should not only prohibit actions prejudicial to the public welfare but also prescribe the performance of acts which if performed made unnecessary resort to repression.

This difference in ideas as to the police functions of the state was due in all probability to the fact that liberal political ideas were developed earlier in England than on the continent. On the continent the royal power was, until the middle of the nineteenth century, personal and absolute rather than constitutional and limited. On the continent, it was believed to be necessary to impose a restraint on individual freedom of action in the formation of associations and the expression of opinion on political matters, and resort was had to preventive measures through which attempts at political change could be nipped in the bud. Forces of a police character were organized whose duty it was to exercise a supervision over those classes most liable to attempt to bring about a change in existing political institutions. With the development of constitutional government on the continent, the arbitrary powers of police authorities with regard to the freedom of speech and association were limited by legal provisions guaranteeing such freedom under conditions clearly set forth in the law. But in the meantime it had come to be recognized that the police might properly take preventive measures with regard to the classes considered dangerous to the community. These were now rather the ordinary criminal classes than the classes desiring political change. The result is that the law on the continent grants to police authorities large powers of supervision over the population which are of the greatest value in preventing and detecting crime, in addition to the purely repressive powers which are used in conjunction with the courts in punishing those responsible for crimes already committed.

In England, however, constitutional government was established so early, and the right of freedom of association and speech was so early recognized that no political police system similar to that to be found on the continent was developed. England was, it is true, the first European country to establish an effective system for the preservation of the peace and the detection and punishment of crime in the larger cities. But when that system was established great fear was entertained, as will be shown, as to the effect on English freedom of the new police force. For that reason it was not vested with preventive powers similar to those exercised on the continent. English police officers do not even now either possess or exercise the powers of supervision which the present continental police forces possess and exercise over the classes believed to be criminal.

When, however, English social conditions increased in complexity owing to the development of commerce and industry and the massing of people in cities consequent thereupon, the English law began to change. It was seen that repressive measures were insufficient to safeguard the interests of urban populations, whose health and general welfare were being imperilled by the great industrial revolution which was taking place. England therefore about the middle of the nineteenth century enacted public health laws and provided a public health administration based upon the idea of prevention as well as repression. For fully fifty years nothing was done on the continent for the protection of the public health and safety comparable to what was done in England. The hesitation evinced by continental countries in following the English example was not due to the feeling that preventive measures as such were improper. For as we have seen, the police of the criminal classes was based on the idea of prevention. This hesitation, while undoubtedly partly due to the fact that the continent did not feel the effects of the industrial revolution so soon as England, was unquestionably caused also by the consideration that preventive measures in the interest of the public health involved serious limitations of the right of property. Preventive measures with regard to the criminal classes involved only a limitation of the right of individual liberty. These the property-owning classes, who controlled the government, did not resent since such measures did not affect these classes, and at the same time increased the security of property. But with the development of liberalism the property-owning classes of the continent had to accept the limitation of their property rights, made necessary by the protection of the public health, and now the law of both England and the continental states is in the case of the police of health and safety based on the idea of prevention as well as of repression.

In the United States ideas as to the repressive character of the police functions of the state, which were inherited from England, were held longer even than in the mother country. This was quite natural. For American commercial and industrial development is a comparatively recent thing and even now has not reached the complexity to be found in Europe. But even in the United States the development of urban conditions, which has been so marked, has resulted in our accepting, particularly in the domain of public health and safety, the idea of prevention as a necessary one. In the United States, however, as well as in England, the police forces never obtained those powers of supervision over the population which are so characteristic of continental police forces.

Anglo-American police. The conception of the police power as embracing both repression and prevention not having been entertained originally, the organization adopted for the discharge of the function of repression is, as a rule in both England and the United States, separate from and independent of the organization or organizations to which have been granted functions of prevention as provision has been made for their discharge.

Furthermore, partly at any rate because of the narrower conception of legislative authority on the continent and the consequently wider conception of the extent of administrative authority, police authorities, which are really a part of the administrative organization of the state, are endowed with much wider powers of supplementary legislation or ordinance than is the case in England or the United States, where by the theory of the law powers of police ordinance are vested in the city councils.

Finally, notwithstanding the gradual recognition in England and the United States of the idea that the power of the state embraces functions of prevention as well as repression, in actual practice the functions of prevention are less important in the Anglo-American countries than in continental European countries.

The concrete effects of these different conceptions of police are: first, as a rule both in England and the United States the authorities commonly spoken of as police authorities, i. e. the authorities established for the preservation of the peace, are entrusted with repressive functions only. They are to preserve the peace, detect and arrest violators of the law, and are rarely called upon to take measures intended to prevent the commission of crime through the supervision of the classes most apt to be guilty of criminal actions.

Second; the head of the police system in English and American cities also has practically no ordinance power beyond the power to adopt regulations as to the conduct of police officers, and has little if any thing to do with the enforcement of those measures of a preventive character known on the continent as sanitary police, and building police, which under the Anglo-American system, are as a rule entrusted to special authorities having no connection with the distinctly police authorities.

Finally, under the Anglo-American system the actual practice, whatever may be the legal theory, is to vest the police power, in the narrow sense in which it is conceived of, in distinctly municipal authorities. These authorities may be subjected to a state control, but they are usually really local rather than general in character.

Continental police. On the continent, however, conditions are quite different. The authority in charge of the police in cities, even if he be locally selected, is recognized as a member of the state system, has usually jurisdiction not merely over the police force, as Americans understand it, but as well over sanitary, building and other matters, and has a large power of ordinance as well as of issuing individual orders in addition to the power of arresting violators of the law. The powers of a preventive character which he possesses embrace large powers of supervision over the city population, the exercise of which in the present condition of public opinion would be resented in both England and the United States. The continental police thus are expected to supervise the actions of non-residents who happen to be in the city, by an examination of hotel and lodging house registers.

The systematic organization of professional disciplined police forces in the narrow sense in which those words are popularly used has only very recently been undertaken by any government. Of course from a very early time the attempt was made to provide officers for the preservation of the peace, like the English parish constables of whom Shakespeare's Dogberry is the most famous example. There was nothing, however, very systematic about the system which the government established, and its action was not attended with great success. Besides forming a police organization similar to that which was based on the parish constable the governments of the centuries preceding the nineteenth century placed a considerable reliance upon the army for the preservation of order, particularly where that might be disturbed as the result of political offences.

The first serious attempt to form a civil police force which appears to have been made was made by the French government by the law of January 6 and 30, 1791. This law organized a force known as the *Gendarmerie,* which was only partially of a civil character. The detailed organization of the force was provided by the law of the Republic of date 28 Germinal in the year VI (1798), where it was stated that the duty of the force was "to assure the maintenance of order and the execution of the laws throughout the Republic." The *Gendarmerie* is at the same time a military and a civil force. It is therefore organized in a military fashion and is at the same time under the direction of the minister of war and the minister of the interior. It is composed of persons who have served in the army, who after trial have shown themselves to be competent to do the work required of them. Their military duties are mainly those done in English and American armies by the provost-marshall's guard; that is, the notification to the proper authorities of offenses against the military law, the pursuit and arrest of offenders and the maintenance of good order.

Their civil duties are of similar character and are discharged mainly in the rural districts. In the discharge of their duties their officers must report to the minister of war a series of crimes which particularly threaten to disturb the public order, to the ministers of the interior and of justice the number of all arrests made with all necessary details and to the minister of the interior with regard to the supervision which is entrusted to them of the criminal and vagabond classes.

The *Gendarmerie* are always subject to the orders of the civil authorities and their chief officer in the department must report every day to the prefect of the department, who in case of trouble may order the union of several brigades (there is a brigade in every department) at the place where the disturbance may take place.[1]

This system was introduced very generally on the continent and particularly in Prussia in 1812. The organization and powers of the Prussian *Gendarmerie* are similar to what they are in France, except that the members of the force are confined to civil police having no functions to discharge relative to the army which has its own force for the discharge of military police functions.[2] Italy has a similar force known as the *Carbinieri*, who are under the control of the minister of war although they are not a part of the army. There is also a force known as the guards of public security under the minister of the interior and the immediate control of the prefects of the provinces. Their duties are mainly of a detective character.[1]

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[1] Block, "Dictionnaire de l'Administration Française," article *Gendarmerie.*

[2] Stengel, "Wörterbuch des Deutschen Verwaltungsrechts," article *Gendarmerie.*

Neither England nor any of the states of the United States has introduced such a system, although England has during the course of the nineteenth century established a thoroughly civil county police system which acts under considerable central control, and several states of the United States, of which the state of Massachusetts was the first to take action, have a very small force of state police with defined and rather narrow functions. Their duties are often mainly of a detective character.[2]

The London system. The first important attempt to form an efficient city police force was made by England in 1829 by the act passed to improve the police in and near the metropolis of London. The metropolis of London as distinguished from the City of London had grown up naturally about the "City" through the settlement of persons in what had been rural parishes. As the population of these parishes had increased and it was seen that the unmodified rural parish organization was inapplicable to the new conditions, special acts of parliament were passed giving particular parishes a special organization. But so far as the preservation of the peace was concerned reliance was placed in the main on the parish constable and the night watchmen who had jurisdiction only in the parish in which they had been appointed. Dr. Colquhoun, a "city" police magistrate, drew attention in the latter part of the eighteenth century to the bad conditions produced by such a system, in a book entitled, "The Police," which in a short time went through several editions. Various parliamentary committees were appointed to examine into the subject in the early part of the nineteenth century. In 1828 a commission was appointed on the suggestion of Sir Robert Peel, who was then Home Secretary, and in 1829 an act was passed which took out of the hands of the parishes surrounding the city the charge of the police forces and provided a metropolitan district, as it was called, which ultimately came to consist of all the country within a radius of fifteen miles from Charing Cross and in which a new police force was established. The police of the city of London which had not been affected by the act of 1829 was put upon somewhat the same basis as the metropolitan police force in 1839. The fact of Sir Robert Peel's connection with the change will always be associated with the new municipal police methods from the terms "Bobby" or "Peeler," which originally used in derison have since come to be applied commonly to city policemen almost everywhere that English is spoken.

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[1] Fairlie, "Essays in Municipal Administration," p. 332.

[2] Whitten, "Public Administration in Massachusetts," p. 80.

This reform met with great opposition. The committees of parliament which in the early part of the nineteenth century had examined into the subject, regarded with great misgiving so radical a change in the historical methods of maintaining order. And parliament made the change only because of the increase of crime everywhere throughout the metropolitan district. The misgivings of those responsible for the change were but a forecast of the opposition which followed its adoption on the part of the people. The "Peelers" or "Bobbies," as they were at once called, were greeted on the streets with hisses and hoots of disapproval, and cries of "Down with the new police," were commonly heard. Only four years after the passage of the act came the Chartist riot in Coldbath Fields when three policemen were stabbed and one killed. The coroner's jury brought in a verdict of "justifiable homicide." Committees of parliament were then appointed to inquire into the conduct of the new police force, approved it, and popular hostility ultimately subsided.[1]

The main characteristics which distinguished the new methods from those which they superseded were three in number. They were, first the professional character of the force. The old system of parish constables and night watchmen had, it is true, been based upon paid services, but the service was paid for on such a low scale that the constable and watchmen were unable to live from their pay alone. The new force in addition to being much more numerous than the old received larger compensation and were expected to devote their entire time to their work. The occupation of policeman thus became a definite occupation, requiring certain specific qualifications, although the powers given the members of the new force were little more than those possessed by parish constables.

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[1] Encyclopædia Britannica, article "Police."

The second characteristic of the system was its centralization. The officers at the head of the new force, at first two commissioners, later one commissioner and three assistant commissioners, who were given the powers of justices of the peace, were appointed by and acted under the immediate direction of the home secretary.

In the third place the new force was organized on a semi-military plan and consisted of constables, sergeants, inspectors, divisional and district superintendents.

At the time of the formation of the system provision was made for a detective force which is known as the criminal investigation department. This department is under the charge of one of the assistant commissioners, who has his headquarters in Scotland Yard with officers of the department in the divisions of the metropolitan district. These officers are often sent all over the country and even to the British Colonies and foreign states.

The Municipal Corporations Act of 1835 contained a provision by which this system might be extended to other British boroughs, although the management of the forces which were to be provided was to be left in local control. Subsequent laws have, by grants of aid from the central government to the boroughs and counties, which attained a certain degree of efficiency, to be evidenced by a certificate of the Home Secretary, encouraged the formation of similar forces in both boroughs and counties, and in 1839, as has been said, a police force for the City of London was organized on pretty nearly the same basis, although, like the borough forces, it was left under local control.

Early American systems. In the United States at the beginning of the nineteenth century the conditions which existed in the cities were similar to those in England. Reliance was placed almost entirely on constables and night watchmen. A good idea of the conditions in one of the large cities of the United States is given by Allinson & Penrose in their *Philadel-*

phia. Here it is said,[1] "The first watchman was appointed in 1700 by the provincial council and had the whole care of the city within his charge. It was his duty to go through the town at night ringing a bell, to cry out the time of night and state the weather and to inform the constables of any disorder or fire. In 1704 it was ordered by the common council that the city be divided into ten precincts and that watchmen be assigned to each constable therein. The constable was the principal officer of the watch. The watch was not a permanent body of paid men, but every able-bodied housekeeper was supposed to take his turn and watch or furnish a substitute. . . . The system however, was onerous and unsatisfactory. . . . At length, in 1749, the complaint concerning the want of a sufficient and regular watch culminated. It was complained that the watch was weak and insufficient and that the housekeepers refused to pay the watch money upon the pretence that they would attend to the watch duty when warned, but frequently neglected to do so." In 1750 an act was passed granting to a board consisting of six wardens to be annually elected the power to appoint and pay as many watchmen as they deemed proper. "In conjunction with the mayor, recorder and four aldermen they were to fix stands throughout the city at which the watchmen were to be posted and to have general control of the watch. The constables and watchmen were supplied with copies of the rules and regulations. The constables reported regularly at the court house and had general superintendence of the watchmen. Neglect or violation of the police rules of the mayor, recorder, aldermen and watchmen was punished by fine." The system was not, however, at all satisfactory. "During the revolution there was practically no police protection to the city apart from the military and even after the act of 1789 was passed the same radically inadequate system continued as existed under the charter government. The police force, if we may use the term, consisted of a high constable, the constables, the watch and the superintendent of the watch, the two former appointed by the mayor, the latter by the city commissioners. The constables had their common-law powers. The ordinance of 1789 creating city commissioners and the several ordinances supplementary thereto placed the appointment and regulation of the watch in their hands, where it remained until 1833, subject to removal by the mayor for misconduct. The first decided step to be noticed in this period is that the city commissioners were to appoint a superintendent of the night watch and hire and employ a sufficient number of able-bodied men to light and watch the city at fixed wages, prescribe rules for their government, and dismiss them when they thought proper."[1] This system was not satisfactory and several riots occurring, one in 1833 and another in 1844, resulted in the improvement of the system, the police force being organized in 1850 somewhat on the English model.

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[1] P. 34.

Conditions were very similar in New York. In 1840 an attempt was made to make the force more efficient. The mayor with the approval of the council was to appoint a chief of police, and the captains and men were to be appointed every year in each ward by the aldermen and the assessors. Naturally such a system was unsatisfactory and in 1853 a change was made. By the law passed in this year the mayor, recorder and city judge were made police commissioners with power to appoint the members of the force during good behavior. At first great difficulty was found in both Philadelphia and New York in making the men wear uniforms. The effort to do this excited somewhat the same remarks that were evoked by the attempts of Colonel Waring to put the street cleaning force of New York into uniform. The wearing of uniform was then considered to be degrading to American manhood, and the attempt to enforce it was resented. Indeed, it is said that in Philadelphia the men did not generally wear their uniforms until 1860.

But in both Philadelphia and New York a somewhat military police force after the English model was ultimately established and the example of these two cities was followed by others, so that at the present time almost every city in the United States has its uniformed police force organized in military fashion and professional in character.

Adoption of London system. The police system as originally introduced in the United States differed in one important respect from that adopted by the English law of 1829. In the United States the preservation of the peace was at first regarded as a purely municipal matter and was therefore put in the charge of the local authorities, and particularly in that of the mayor. In London, however, it was regarded as affecting the interests of the central government and therefore was put into the hands of the central government. The experience of a number of the cities of the United States under the local management of the police force was such as soon to produce a change in this respect, which brought the American treatment of the subject more into accord with English ideas. Thus in 1857 the police of New York City and of Brooklyn were united and put into the hands of a centrally appointed police commission and the metropolitan police district as it was called was formed. The example of New York was followed within ten years by Baltimore, St. Louis, Chicago, Detroit, and Cleveland,[1] while other centrally appointed police boards have since been provided in several cities in Massachusetts, among them being Boston, Cincinnati, Washington, Manchester, N. H., eleven Indiana cities,[2] and Providence. In some of the cities in which these centrally appointed boards were created return has been made to the method of local appointment. This is so in New York, Chicago, Detroit and Cleveland.[3]

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[1] P. 99.

The attempt to centralize the police forces of cities in the United States has given rise to a number of judicial decisions as to the constitutionality of this action on the part of the state, either under the ordinary American state constitution or under a state constitution which contains a provision that local officers shall be locally selected. The rule supported by the greater weight of authority is in favor of its constitutionality under either supposition. In New York, however, state appointed local police are unconstitutional. But the state may form a district which is substantially different from the territory of a city and provide for a centrally appointed police force therefor.

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[1] Fairlie, "Municipal Administration," p. 133.

[2] Ibid., p. 139.

[3] Ibid., p. 133.

The reasons for the adoption of centrally appointed forces, apart from transient partisan political ones, are two in number: one is the general dissatisfaction with local police management. This was largely responsible for the passage of the New York law of 1857. It is of course true that partisan political reasons had their influence then, but it is none the less true that the condition of the police force in New York under local management was bad.

The second reason for the centralization of municipal police forces has been the neglect of cities having the management of the police to enforce state laws which were believed to be of vital importance by the people of the state as a whole, particularly the prohibition laws.[1]

Continental police systems. In most of the countries of Europe the police of the larger cities are organized in the London fashion. They are also either under state management, or are subject to a strong state administrative control. Thus in France the organization of the local police force in cities of more than forty thousand inhabitants is fixed by decree of the President made after hearing the wishes of the city council. The members of the force in these cities are appointed by the mayor, whose action must be approved by the Sub-Prefect or Prefect, who alone has the right to remove them from office. The expense of the force is obligatory on the city. In the smaller cities the city authorities have control of the force.

In Germany (Prussia) the care of the police is, in the larger cities, placed in the hands of state appointed authorities known as police presidents or directors, and in the smaller cities in those of the burgomaster. In the larger cities police officers are to be chosen from non-commissioned officers in the army and navy of not more than thirty-five years of age, who have had at least seven years of service.[2] The organization of the forces of particular cities is fixed by ordinance of the central government.[3] In the cities in which the police are in the direct administration of the central government, there is usually one patrolman for every fifteen hundred inhabitants. In the cities which administer their own police the number of patrolmen is often less.[1]

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[1] Sites, "Centralized Administration of Excise Laws," p. 84.

[2] Grantzow, "Der Schutzmann, pp. 35 and 36.

[3] Leidig, op. cit., 1, 153.

Advantages of State police. It is difficult to obtain any satisfactory testimony as to the effect on the preservation of the peace and the maintenance of good order of state administration of the police force in the cities of the United States. The testimony would on the whole seem to be in favor of a state appointed force,[2] although it cannot be said that a state appointed police force is any more successful in securing the enforcement of Sunday closing, liquor or prohibition laws than a locally appointed police.[3] Ex-Mayor Quincy, of Boston, is reported as saying,[4] "I am free to say that under the present board[5] police administration has been better, the laws have been more strictly enforced, good order has been more generally maintained than under the old system. When the tone of the state government is higher than that of the city government centralized police administration is the better system. The strictly police functions are more properly a state affair than most of the other departments of the city government."

It is to be remarked, however, that the United States is the only country which has adopted the principle of uncontrolled local police management. While in the countries of Europe the system which was established about the middle of the nineteenth century and which was based either upon central appointment or a strong central administrative control has been permitted to continue unchanged, in the United States continual changes are being made in the system. Sometimes we have local control and other times we have state control. The stability of the European systems would indicate that they are reasonably satisfactory; the instability of American conditions would also indicate that the American system is not satisfactory, were it not for the fact that the exigencies of partisan politics are responsible for so many of the changes in the municipal organization in the United States. But while making due allowance for these disturbing influences it can be said that the police forces of the ordinary American city are not satisfactory; and the inference may be just as strong, perhaps, that one of the reasons why they are not satisfactory is that the control of the police force is too subject to the influence of the classes to control whose actions the police have been formed. State control of the police would tend to remove the police force from these influences. Such, at any rate, would appear to have been the experience of the city of Boston.[1] This feeling is voiced by a message of the Governor of the State of Massachusetts in the year 1868 in which he vetoed a bill passed by the legislature to abolish the state police. He says, "A prosperous commerce, progress in the arts and the increase of manufacture, have condensed our population in large towns and cities, intensified vicious inclinations and multiplied the actual number of crimes. This is apparently the price of public prosperity and wealth. Official records display to the public gaze an alarming increase of offences against the persons and property, of licentiousness and gambling as well as of insanity and pauperism, that are directly traceable to lives of vice. . . . To deal with this advanced demoralization the municipal police, however honest or well disposed, seem to a great extent inadequate. . . . It is apparent that public decency and order and public justice require the maintenance of an executive body which shall not be controlled by the public sentiment of any locality, which shall be competent in its spirit, its discipline and its numbers to a reasonable and judicious but just and impartial enforcement of the statutes of the Commonwealth."[2]

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[1] Held, "Organization der Preussischen Polizeiverwaltung," p. 9.

[2] See Sites, op. cit., pp. 26, 27, 28.

[3] Ibid.

[4] Ibid., p. 75.

[5] The Police Board in Boston has since 1885 been appointed by the governor of the State.

Police boards versus commissioners. An important question connected with police administration in the United States has been what shall be the composition of the authority which has in its hands the management of the police? Shall it be a board or shall it be a single man? This question does not seem ever to have presented itself in Europe where the head of the police force is usually one man. In the cities of England with the exception of the metropolis of London however, there is a committee of the council, called the watch committee, which has charge of the police. The establishment of this committee was probably not due so much to any belief that the board system was the best system to apply to police administration, but to the fact that committee administration was the only system consistent with the general principles of the Municipal Corporations Act, which consolidated all municipal functions in the council.

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[1] Sites, p. 50, et seq.

[2] Whitten, "Public Administration in Massachusetts," p. 85.

In the United States the board system of police management was characteristic of the first attempt to organize a modern police force, namely the New York law of 1857. The board system was introduced here, however, probably not because a board was believed to be particularly appropriate to police administration, but because the board system was just about that time believed to be the proper form of municipal government. It is true that afterwards the demands of the spoils system seemed to make a board necessary. For only through a board could the spoils of the police force be distributed between the two leading parties. This consideration does not seem, it is true, to have affected the legislature which passed the act of 1857, for no trace of the bi-partisan idea is found in that act. Later on, however, the bi-partisan idea had a potent influence in giving the board form to the municipal police authority. The abuses which resulted from bi-partisan boards have led in more recent years to quite a tendency towards the abandonment of the board idea and entrusting the management of the police to the hands of one man.[1]

The chief of police. Another question relative to the organization of city police forces in the United States which has aroused considerable debate is whether the officer in immediate charge of the force shall be taken from the ranks of the uniformed force or shall be selected from outside that body. In European countries this question does not seem to have aroused any discussion. This absence of discussion is probably due to the fact that the term of the person in charge of the force, i. e., in London the commissioner, in Germany the police president, director or burgomaster, is a long one, in most cases practically for life. That being the case, the incumbent acquires a knowledge of the force, although he may not have risen from the ranks, which enables him to manage the force as well as one who has so risen. He has also broader views as to police problems where he has been taken from the outside, which is the rule in Europe, than one who has risen from the ranks, and is on that account more liable to look at matters from the viewpoint of the public than from that of the professional policeman.

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[1] Fairlie, "Municipal Administration," p. 137.

Tenure of police officers. Allusion has been made to the fact that at quite an early time in the municipal development of the United States the attempt was made to give police officers a tenure somewhat different from that accorded to other officers of the city government in that by law they could not be arbitrarily removed. In some states, as e. g., in New York, the courts have the power to review and quash the determinations of the higher police authorities who have, after giving the hearing provided by law, removed police officers from office. It is very doubtful whether the exercise of this power has had good effects on the character of the police force. It is certain that no country outside of the United States has accorded to its police officers such a privileged position. Usually their tenure is the same as other officers, which is at the will of the appointing officer. In Germany official tenure is peculiar. Arbitrary removal is nowhere recognized, but occurs only after a conviction by a *quasi* judicial tribunal known as a disciplinary tribunal. These disciplinary tribunals are, however, not a part of the regular judicial system and in their decisions pay more regard to the needs of the service and less to the rights of individuals than do the ordinary courts.

The disciplinary power over police officers embraces in addition to the power of removal the right to impose fines, degradation of rank, suspension, and in Germany also arrest. Such punishments are usually inflicted by the higher police officers and are to be found in the most highly developed police forces of the United States.

Defects of American police. Police forces are, notwithstanding the great services they render, not usually popular. The encroachments on the field of what are regarded as individual rights which they necessarily make cause frequent complaints to be made as regards both the efficiency and the honesty of the police. Probably in no country are the complaints of this sort more numerous than in the United States.

The main reasons for dissatisfaction with the police force in the average large city of the United States are not that it cannot be held responsible, nor that it favors the members of one political party over those of another. The most common complaint against the city police is that, either as a body or through its individual members, it sells the right to break the law. Probably, in this respect, the police force of American cities is not peculiar. The same complaint is frequently heard of other city departments, and of the departments of both the state and national governments, and it is not by any means unheard with regard to the police of other governments. But the persistence and the universality of the complaint in the cities of the United States cannot fail to produce the impression that the habit is more wide-spread and more deep-seated in the case of the American municipal police than it is elsewhere. We are naturally inclined to ask whether there is anything peculiar in the organization of the American city police, or in the conditions of American life, which should have for its effect a greater disposition on the part of the police to sell their favor in this country than in others.

So far as concerns the police of Great Britain the organization of the city police force is much the same as here. The force, as a whole, is called upon not merely to suppress disorder and open violations of the law, but also to ferret out secret violations of the laws which have been passed with the particular idea in view of improving the public morals. In the case of the continential police forces the conditions are somewhat different. The enforcement of most of such laws is intrusted to a special department of the police force known as the morals police, and the major part of the force is removed to a degree, at any rate, from the temptation to sell its favor.

In one respect, however, the conditions of American life differ very much from those of European life, and the difference is perhaps in large part accountable for the greater use made by the police of American cities of their powers in their own peculiar interest. In the United States the people have never so clearly as in Europe, and particularly in continental Europe, distinguished between vice and crime. It is too commonly believed in this country that once we have determined that an action is vicious, it necessarily follows that such action should be criminally punished. Whether an action is believed to be vicious or not depends, of course, upon a variety of things. But whatever the criterion of morality or immorality may be, the public belief in its immoral character is the result of the standards, somewhat subjective in character, of the majority of individual men. Now, whether an act shall be a crime or not should be dependent simply upon the question, Is it socially expedient to attempt to punish such act criminally? The morality of the act has little, if anything, to do with the matter. An action may, from the viewpoint of subjective individual morality, be absolutely innocent, and yet it may properly be a crime. Thus from the individualistic moral point of view it is an innocent action for a man to drive on either side of a city street. Yet the government may properly determine quite arbitrarily that it shall be a crime to drive on either the left or the right side of the street. Again, an action may be from the viewpoint of individualistic morality most vicious in character. But its viciousness may not result in making it a crime. Mere sensual indulgence in any form is vicious. But the mere fact of its viciousness is not sufficient to justify the government in making it criminal.

The only justification for punishing an act criminally is that the welfare of society requires that it should be so punished. Now it may well be that the difficulty of punishing some particular act may be so great, and the procedure necessary to secure its punishment may be so arbitrary, that the social welfare is less subserved by the attempt to punish it than it is by leaving it alone, no matter how vicious it may be. By letting it alone the people in their governmental organization do not countenance it. They simply declare it is inexpedient to attempt to punish it criminally. Take, for example, the case of gambling. The state may determine that it is inexpedient to make mere gambling an offense. This is the general rule in the United States as to private gambling. No one commits a crime in gambling. The state does, however, say that it will not permit its power to be exercised to recover a gambling debt. The state often says also that keeping a public gambling table is a crime. It does so because it believes, or the majority of the people believe, that keeping such a gambling table has such bad effects on society that it may properly be made a crime. But suppose, after numerous and persistent efforts to suppress the keeping of public gambling tables the state came to the conclusion that these attempts led, through the corruption of the police force and the arbitrary invasion of the right of personal liberty, to a greater social harm than the keeping of gambling tables in such a way that no scandal or disorder was caused thereby—suppose, then, that it ceased to attempt to punish criminally the mere keeping of such a table, it could not fairly be said that it countenanced gambling.

Now, one of the results of attempting to determine the criminality of an act by its viciousness has been to force upon the police of cities in the United States work which, under the standards of morality prevailing in the cities, it is practically impossible for them to perform. Little, if any, good is therefore actually accomplished, even from the point of view of those who believe that an act should be criminally punished because it is vicious. All that is accomplished is the satisfaction of the conscience of those persons, of whom there are unfortunately too many, who seem to think that if they have made a sort of profession of faith by denominating as criminal in some statute, an act which is commonly regarded as vicious, they have satisfied the demands made upon them by the obligation to live a virtuous life. The moral satisfaction of such persons has, however, been secured at the expense of very evil effects in other directions.

That the evil effects of such a method of action are great cannot for a moment be denied. And these evil effects are particularly marked in the case of the police forces in American cities. Public opinion seems to justify the passage of statutes upon the enforcement of which that same public opinion does not insist. The result is a temptation for the police which human nature is hardly strong enough to resist. The police force becomes a means by which the whole city government is corrupted. There has never been invented so successful a "get-rich-quick" institution as is to be found in the control of the police force of a large American city. Here the conditions are more favorable than elsewhere to the development of police corruption, because the standard of city morality which has the greatest influence on the police force, which has to enforce the law, is not the same as that of the people of the state as a whole which puts the law on the statute book. What the state regards as immoral the city regards as innocent. What wonder then if the city winks at the selling by the police of the right to disobey the law which the city regards as unjustifiable?

These conditions of American life must be borne in mind when we consider the police problem of the modern large American city. Until we alter somewhat our standards of determining what are crimes we can hardly hope for a different kind of police force. Changes of its organization are mere scratches on its surface and will have little if any effect on its real character. As to what are the concrete instances in which changes should be made in the criminal law, it is, of course, exceedingly difficult to say. For we must bear in mind that there have been many instances where the criminal law has anticipated, in large measure, the popular standards of morality. Civilization owes much to criminal laws whose enforcement has been very imperfect. At the same time no criminal law should be placed upon the statute book until the question of the possibility of its enforcement, and the effects of its attempted enforcement on the social well-being, have been carefuly considered. No criminal law should be kept permanently on the statute book, no matter what may be the immorality of the act which it punishes, where the effects on the social well-being of the attempt to enforce it are worse than those of letting the act go unpunished. It always should be borne in mind that the state is not the only means by which civilization is advanced. Much may profitably be left to the church and to other organizations whose work is moral instruction and uplifting, but to which is denied the sovereign right of punishment.

Police licenses. Sometimes the state attempts to regulate rather than suppress some occupation or act deemed dangerous to the public welfare. This is often the case with the liquor traffic. Where such a policy is adopted a license is granted without which carrying on the occupation is criminally punished. Usually the issue of such licenses is a function of the police authorities. In some of the cities of the United States special authorities called licensing or excise commissions are organized for this purpose. The disintegration of the police power in English and particularly American cities to which attention has been called has resulted also in the grant of the power to issue other licenses to authorities not connected with the police. Thus in the cities of the United States the licensing of the sale of explosives and fireworks is a function of the fire department, that of peddlers and push carts, of the mayor and so on. In continental European cities usually all licenses are issued by the local police authority.

Public health and safety. The administrative police of public health and safety differs somewhat from that of public peace and order. As a general thing the peace is preserved and public order is maintained through repressive rather than preventive action. Most of the work of the police authorities charged with this function of administrative police consists in the arrest of violators of the laws or ordinances which the police authority is to enforce. It is true, of course, that in many cases all that the authorities having charge of the administrative police of public health and safety will have to do in order to so protect the public health and safety is to arrest and bring to punishment violators of public health and public safety laws and ordinances. But it is impossible under the complex conditions which exist in modern municipalities to put all such police regulations into the form of commands to individuals to do or not to do given things whose violation is punishable as a penal offense. In many cases large discretion must be given to the police authorities to apply general rules to particular states of facts. Thus it will have to be determined whether certain conditions constitute a menace to the community. The decision of such questions may, of course, be entrusted to judicial authorities, but as a general thing judicial authorities, which are mainly engaged in the decision of controversies having to do with the interpretation of the private or the criminal law, are not fitted for the decision of these questions. They are not so fitted because they are mainly engaged in the interpretation of other branches of the law, and because the procedure before them is so slow that the public health and safety might in many cases be endangered if resort to them were necessary before the administrative authorities could take action. The result is that the world over important functions involving the exercise of great discretion in the administrative police of public health and public safety are entrusted to administrative authorities which do not belong to the judicial system.

In England. The English methods of securing the public health and safety, like most of the methods of English administrative law, are based upon detailed legislation. By the common law the only means of protecting the public health was to be found in the law of nuisances. By the common law a public or common nuisance was indictable. Such a method of preserving the public health and safety was ineffective and when urban communities began to grow, as they did in the early part of the nineteenth century, resort had to be made to other methods. The first important change which was made in the law was made by the Nuisances Removal and Diseases Prevention Acts of about 1850, later consolidated in 18 and 19 Victoria, chapter 121. By these acts Parliament enumerated a long list of acts which were made nuisances. On the complaint that the law was not being obeyed, justices of the peace were authorized to issue orders for the removal of the nuisances, which must be obeyed under a penalty for disobedience by the persons maintaining them.

This act was later amended and with its amendments was incorporated into the Consolidated Public Health Act of 1875, which is, in addition to being what we would call a public health act, also a local government act. By it the entire country is divided into districts which are either urban or rural. Every borough, roughly speaking, is an urban district authority. The law provides that every urban district shall have a medical officer of health, an inspector of nuisances and a surveyor, who are appointed, removed and controlled by the borough council, and who are to execute the health laws. These, it will be remembered, are much wider in their extent than what we would call health laws, embracing not merely health but building and public safety regulations.

The borough council, as borough council, has the power of police ordinance in the narrow sense of the word, that is, the power to issue ordinances for the good order and convenience of the borough. These ordinances may be disapproved by the Privy Council. As urban district authority the borough council has wide powers of ordinance relative to the public health and safety, that is relative to diseases prevention, buildings, removal of rubbish, prevention and diminution of offensive trades, markets, and so on.[1] Such ordinances must be approved by the Local Government Board at London.[2] Besides issuing ordinances the urban district authorities and their medical health officer and inspector of nuisances may likewise issue orders of individual application. Thus an urban district authority may order the owner or occupier of a dwelling to whitewash or cleanse his house if the necessity for so doing is certified by the medical officer of health;[3] may order an owner of a house to bring water into his house from the public supply;[4] may, in case of a nuisance, order the person responsible for it to abate it, and in case of his neglect to act may make a complaint before the justice of the peace, who, if satisfied that the nuisance exists, may order its removal,[5] and may remove to a proper hospital anyone suffering from a dangerous infectious disease, who is without proper lodging or is lodged in a room occupied by more than one family, or in a common lodging house.[6] The medical officer of health and the inspector of nuisances have each the power to inspect, condemn and seize any food offered for sale which appears to be diseased or unfit for human food.[1]

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[1] Husband, "Sanitary Law," p. 91.

[2] Ibid., p. 94.

[3] Ibid., p. 34.

[4] Ibid., p. 44.

[5] Ibid., p. 59.

[6] Ibid., p. 68.

Central control. The powers possessed by the municipal, sanitary and public safety police authority are exercised under a central administrative control which is framed with the idea both of increasing local efficiency and of protecting private rights, though the former purpose is more emphasized than the latter. The central authority, that is the Local Government Board at London, "may order a local authority to remove or contract for the removal of house refuse from the premises, the cleansing of earth closets, ash pits, cess pools and the cleansing and watering of streets.[2] But the largest powers in this direction are in connection with epidemic, endemic and contagious diseases. Here it is almost supreme. It may make, alter or repeal such regulations as seem proper concerning interment of the dead, house to house visitation, medical aid, disinfection, cleansing, ventilation, etc., and may even determine what authorities shall enforce these regulations."[3]

The Local Government Board may further fix the qualifications, methods of appointment, duties, salaries and tenure of office of the medical officer of health and the inspector of nuisances, has the right of approval of the appointment of all borough analysts "whose duties are to enforce the law prohibiting the adulteration of food and drugs and the selling of food and drugs that are adulterated or are not of the nature, substance and quality demanded."[4] "The power of the board over defaulting authorities is far-reaching and effective. It is necessary that a complaint be filed before an inquiry can be held, but as any one can make complaint and as it has been found that if an authority is negligent there will be at least one person willing and ready to so report this provision does not restrain the activity of the Board. There are quite a number of cases where complaint has been made but the Board has found no default. In the interpretation of the law by the courts, no encroachment has been made upon the powers of the Board, and although the cases are few, those that exist are plain and decide that in questions of expediency the judiciary will not interfere. Although stringent methods are provided in case the local authority refuses to act within the allotted time, it is seldom that it is necessary to go this far."[1] "Another method of central control of very limited application is to be found in the power of withholding the subsidy paid towards the support of medical officers and inspectors of nuisances if returns and reports are not sent to the Local Government Board as required. The retention of the subsidy is not in the nature of a fine imposed upon the officer, for the expense falls upon the locality which he represents rather than the officer himself. It contributes something, however, towards preventing the selection of incompetent officers."[2]

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[1] Odgers, "Local Government," p. 139.

[2] 38 and 39 Victoria, chap. 55, §§ 14 and 80 to 90.

[3] Maltbie, "English Local Government of To-day," p. 89.

[4] Ibid., pp. 100 and 103.

In the United States also the police of public health and safety starts from the idea of nuisance. It is further based on the principle that there is to be a legislative determination in great detail as to what are nuisances. There is not in this country any elaborate statute on the subject, and in those states where special legislation is permitted by the constitution much of the legislation is contained in statutes which affect only one city. New York City was one of the first cities in this country in which the matter of public health was taken in hand. This was done about the middle of the nineteenth century and here what was accomplished was largely accomplished by regulations inserted in the charter of the city.

In addition to the special acts passed by the legislature the matter is also regulated by municipal ordinances, which are passed either by the city council, or by some of the executive departments of the city, as the health department. As a general thing in the United States there is no necessity that the ordinances passed by the municipal authorities shall receive the approval of any superior administrative authority, nor has any superior authority the right to annul them. The courts, however, have the right to declare illegal all ordinances which violate a law, or in case of ordinances passed as a result of the exercise of the general ordinance power, all ordinances which are unreasonable.

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[1] Ibid., p. 105.

[2] Ibid., p. 107.

Separate departments. In American cities, further, administrative public health and safety police powers are usually vested in a series of authorities. For example in the City of New York, by the charter there are a fire department, a health department, a tenement house department, and five building departments, one for each of the five boroughs into which the city is divided. As a general thing, owing to the unconcentrated character of municipal organization in the United States, these departments are largely independent of the mayor, although he with the consent of the council may appoint the heads of the health departments. In New York City, however, and in some of the other larger cities, most of these departments are completely under the control of the mayor, owing to the fact that the mayor has absolute powers of appointment and removal. In some cases the whole matter of police, in the broad sense of the word, is put into the hands of a single officer called the Director of Public Safety. Where this is not the case the different departments having charge of the police of public health and safety are variously organized. Sometimes we find a single commissioner but more frequently boards. The health department is usually placed under a board which is believed to be the proper organization because of the large legislative and *quasi* judicial powers entrusted to the department.

The executive forces to which is entrusted the enforcement of the laws relative to public health and safety, in the larger cities of the United States, have been, like the police force for the preservation of the peace and the maintenance of public order, placed upon a professional basis, and are sometimes organized in a military fashion and put in uniform. This is particularly true of the force established for the extinguishment of fires, which has been completely professionalized in all of the larger cities, and of the street cleaning force, which has been subjected to somewhat the same influences in the larger cities, although in the smaller cities the work of cleaning the streets is often done by contract.[1] The force required by the building and public health authorities is naturally not nearly so large as is necessary for the extinguishment of fires and cleaning the streets, for its outdoor work consists mainly in the work of inspection. The inspection force is, however, like the police and fire forces, sometimes a uniformed force. Much of the work of the building and health department, particularly the former, is done indoors and consists in approving plans of buildings, etc., which must by the law be submitted to the competent department before building operations may be begun.

Central control. Municipal police powers relating to the public health and public safety have not very commonly been subjected to any central control in the United States. In some of the more advanced states, however, like New York and Massachusetts, state boards of health have been formed, which have rather ill-defined powers of control over the actions of municipal health authorities. Dr. Fairlie says[2] "The degree of positive or compulsory authority which the state board of health can now exert over local boards is limited to certain specific provisions of the law. By means of these it can first, require local boards to take action in any particular case recommended by the state board; second, overrule acts of local boards where they affect the public health beyond the jurisdiction of the local boards; third, secure the enforcement of any duty prescribed by statute on local boards through the use of mandamus proceedings in the courts; and fourth, assume direct control where no local board is organized.

Under these provisions a considerable degree of positive central control over the local boards might be exerted except for two causes. The legislative appropriation for the expenses of the state board sets the limit to its activity in this as in other directions; but equally potent is the fact that the policy of the board has been to use its mandatory and compulsory powers as little as possible. It has acted on the principle of working through the local organizations established by law, preserving their autonomy and independence, settling their disputes, supplementing their deficiencies and endeavoring to elevate the plane of their usefulness.[1] Thus the whole tendency has been to leave the actual sanitary administration in the hands of the local authorities and to make the central board an educational bureau rather than an office for issuing mandatory orders to the local boards.[2]

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[1] The same tendency is noticeable in the large cities of Europe in the case of the forces for the extinguishment of fires.

[2] "Centralization of Administration in New York State," p. 138.

The absence of any strong centralizing tendency may be explained in part by the board form of organization and by the presence of local health officers on the central board, but the unanimity of opinion on the subject is a strong indication that the energetic exercise of the compulsory powers would be unwise."

Conditions in Massachuetts are very similar to those in New York. Dr. Whitten says:[3] "Although the state board possesses great powers it can exercise little direct control over the local authorities. Its chief coercive powers are exercised upon the individual directly. In many cases its powers are simply coördinate with those of the local boards; either may act, but in case one acts there is no necessity for action on the part of the other. This is largely the case with reference to food and drug inspection, offensive trades and contagious diseases."

Sanitary police powers. What exactly is the power of administrative police possessed by the municipal authorities in the United States having charge of the administrative police of public health and safety is of course determined by the laws regulating their powers as well as by the common law of nuisances as it has been developed by the decisions of the American courts. It may, however, be said that this power is a very broad one, notwithstanding the existence of constitutional provisions protecting private rights. The courts have decided that the constitutional provisions protecting private rights were adopted in view of the police power which is not limited by them. Their existence only limits the power of the legislature or its delegates to add by legislation to the list of nuisances. That is, the courts hold that the legislature cannot itself nor by its delegate declare to be a nuisance what is clearly not a nuisance. This means that nuisances not common law nuisances are subject finally to judicial definition; if the judicial definition coincides with the legislative definition anything may be made a nuisance.

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[1] Reports of the State Board of Health, Vol. 8, p. 9.

[2] Ibid., Vols. I, 101; III, 363; X, 36.

[3] "Public Administration in Massachusetts," p. 72.

Once it is determined that anything is legally a nuisance the powers of the police authorities to suppress such a nuisance are of the widest character. This is particularly true as to the determination that the facts exist which justify police intervention. For a long time our law was the same as that of England, namely, that a nuisance could be abated practically only by indictment or other criminal proceeding. As this involved the action of a jury it was found practically impossible under such a system to safeguard the public health in the larger cities. Of course it was true that the rule of the common law that anyone might abate a nuisance was adopted in our law, but public officers could act only at the risk of being held responsible for damages in any suit brought against them by individuals injured by their action, in case the thing abated was decided by the courts on the suit not to be a nuisance; and the courts could on such suit practically revise the determination of the police officers as to the existence of the conditions which would justify their interference.

Mr. Dorman B. Eaton, to whom the administrative law of New York owes so much, set to work about the middle of the nineteenth century to remedy this state of things. He devised the scheme of a trial before the health authorities as to the existence of a nuisance, at which trial the individual whose maintenance of the nuisance was complained of could be heard. After the determination made at that trial the health authority was given the right to proceed to the abatement of the nuisance complained of. The attempt was made in a test case which was immediately brought to enjoin the execution of a nuisance order made after such a trial, but the court refused to permit the issue of the injunction, and held that the trial before the health authority was due process of law under which property might be taken if taking the property was necessary for the abatement of the nuisance. This method is not, however, usually followed. The order for the abatement of the conditions constituting a nuisance is usually issued without a hearing and may therefore be reviewed by a court in a collateral proceeding like an injunction or a suit for damages where the order has been enforced. Such a method is believed to be proper under the usual constitutional provisions.

Sanitary powers of French mayor. By Article 91 of the French Municipal Corporations Act of April 5, 1884, which was taken from the older legislation, the mayor is charged under the supervision of the higher administrative authorities with the municipal police. The municipal police is defined in Article 97, Section I of this law, where it is said, "The municipal police has as its object to secure good order, security and public health." Article 97 then gives a long enumeration of matters which are subject to the police power of the mayor, but it is believed that this enumeration is not of such a character as to limit the extent of the municipal police as it is defined in Article 97, Section I.[1]

The mayor exercises his powers through the performance of acts which are either special or general in character. The general acts or regulations which he issues may be divided into those which are permanent and those which are temporary. The law of 1884 provides that all acts to be valid must be brought to the knowledge of the persons whom they concern. In the case of general acts this is accomplished by publication, in the case of special acts, by special notice. The permanent general acts of the mayor must be transmitted to the prefect who has the right to suspend or annul them either for illegality or for impropriety, but may not himself exercise any ordinance power by modifying the ordinances of the mayor. The temporary general regulations and the individual orders are of immediate force as soon as they are brought to the knowledge of the persons interested. The permanent general regulations do not have the force of law until the expiration of a month from the time that they are submittted to the prefect. In case of urgency, however, the prefect can give them immediate effect. The permanent general regulations have the force of law until they are abrogated by the mayor or suspended by the prefect. The exercise of the municipal police power by the mayor is thus subject to the control of the most important representative of the central government, that is the prefect.

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[1] Jouarre, "Des Pouvoirs de l'Autorite Municipale en Matière d'Hygiéne et de Salubrité," p. 15.

The broad police power granted to the mayor has, however, been considerably limited by the interpretation which the courts have put upon it. The courts have based themselves upon the following principles: First, when the law recognizes a private right the ordinances of the mayor can not attack it either by refusing to recognize, directly or indirectly, the existence of the right, or by limiting its extent or by regulating the mode in which it must be exercised. Second, an administrative ordinance cannot impose an obligation upon individuals if that obligation has not its basis in the law. Applying these principles the courts have held that when a parcel of real property presents by reason of its natural situation dangers to health, the mayor cannot by an administrative order issued under his general police power require the proprietor to remedy this condition of things by executing the work which is necessary to put it in a sanitary condition; that is, while the mayor may order the removal of unsanitary conditions which result from the way in which the property is maintained, he may not order changes in the use of the property, provided the use is a legal use, notwithstanding that this use may be dangerous to the public health. While subject to these conditions the mayor may order the owner of property to put his property in a sanitary condition, he may not order such owner to adopt any special means for putting the property in such condition. The only exception to this last rule is that the mayor may order in the larger cities the adoption of water-closets in place of the old privies which formerly existed.

The courts have also held that the mayor may not under the general police power issue ordinances and orders which have a retroactive effect. For example, while he may under this power regulate methods of building construction for the future he may not issue orders which oblige owners of existing buildings to comply with the requirements of the ordinances. They have also held that the mayor may not forbid the carrying on of a trade which is dangerous to the public health, by all persons who have not received a license from himself. All he can do is to prescribe that every individual wishing to follow such trade must show beforehand that he fulfils the conditions which are believed to be necessary in order to protect the public health. He may not, certainly, under such a power, establish anything in the nature of a monopoly.

The interpretation of the courts is no less favorable to the rights of individual liberty than it is to the rights of property. Thus it is believed that under the French law it would be improper through the exercise by the mayor of the police power to compel either all persons or all persons who have been exposed to smallpox to be vaccinated, or to take anyone suffering from a contagious disease from his own home and put him into a hospital. The only exception to this latter rule is in the case of prostitutes. The police authority is permitted to insist that infected prostitutes shall go into the hospitals provided for them.

The application of these principles has brought it about also that the mayor may not through the exercise of the police power order the undertaking of the work necessary to put a building into proper condition except where the general public health is interested by his action, that is, he has not the power to order the remedy of unsanitary conditions which are susceptible of affecting the health only of the owner or the persons inhabiting the building complained of.

The powers of the mayor relative to public health included in the general police power were thus not sufficient. In 1850 a law was passed which provided for a commission on unhealthy dwellings. Provision for such a commission was, however, left to the discretion of each municipal council, and the law was so applied as to be, as compared with the public health legislation of England or of the United States, quite ineffective and was therefore repealed in 1902. It had been held thus, that the only dwellings affected by the act were dwellings inhabited by human beings, and by tenants and not by owners, the law basing itself on the idea that it was the owner's own business if he lived in an unhealthy house. Further, the commission had jurisdiction only where the unsanitary conditions were of such a character as to endanger the lives of the tenants. Thus it had been several times held that the law did not justify forcing an owner to bring water into a house, since the presence of water in a dwelling affected merely the convenience and not the health of the inhabitants. Finally, the unsanitary conditions which would justify the interference of the commission must be due either to the character of the dwelling or to the action of the owner. That is, the law might not be put in force if the unhealthy conditions were due, for example, to the narrowness of the street upon which the building was situated, to the fact that the building was near marshes or unhealthy ponds of stagnant water, or to the acts of the tenant acting under rights guaranteed to him by his lease.

Health law of 1902. In the year 1902, however, the French legislature adopted a new and more comprehensive health law. This law aims in the first place, at preventing the spread of contagious diseases, and in the second place, at improving the sanitary conditions of dwelling houses; and with these ends in view increases very greatly the powers of the mayor. It provides thus for compulsory vaccination against smallpox. It also gives to the mayor the power by ordinance to compel disinfection of all places where there have been cases of certain enumerated contagious diseases, and to order the destruction of objects used by those afflicted with such diseases. Notice of the existence of such diseases must be made to the government. In places of 20,000 inhabitants and over the work of disinfection is attended to by the municipal authorities, in the smaller cities by the departmental authorities.

The law in the second place attempts to ensure sanitary dwellings by providing that in urban communities of 20,000 inhabitants and over no one may erect a dwelling without a building permit to be granted by the mayor, which permit is granted only after an examination of the building plans. In case such permit is refused appeal may be made to the prefect of the department. If the prefect upholds the decision of the mayor, appeal may be taken to the highest administrative court, viz., the Council of State, if the mayor has exceeded his powers, i. e., if the refusal to issue the permit is due to any other reason than failure to observe the building ordinances which the law requires the mayor to issue.

The law of 1902 finally, gives to the mayor power to require changes to be made in existing landed property which are necessary in order to put it into a sanitary condition. In the performance of his duties with regard to existing property, the mayor is aided by a sanitary district board. The sanitary districts over which these boards have jurisdiction are made by the general councils of the departments and as a matter of fact are identical with the ordinary districts (*arrondissements*). The boards must include in their number—at least five and at most nine—a member of the general council of the department elected by it, a physician, a pharmacist, an architect or builder, and a veterinary, appointed by the prefect.

If any property is dangerous to the public, the mayor, or in case of his negligence the prefect, shall ask the sanitary district board to give its opinion on the nature of the repairs to be made, and upon the expediency of forbidding the use of the property for purposes of habitation until the unsanitary conditions have been remedied. Persons interested in the property must be heard before the board if they so desire. In case the board decides in favor of the owner, the prefect may bring the matter before the departmental board of health, which may reverse the decision of the district board. The mayor is then to issue an order enforcing the decision of the board. Appeal may be taken from his order to the administrative courts, which may reverse or modify the decision of the board and may consider questions of fact as well as of law.

The law in the interest of forcing the municipal authorities to take steps for the improvement of sanitary conditions provides for a central administrative control over the exercise of his powers by the mayor. Thus, if a mayor does not issue the sanitary and building ordinances required by the law the prefect may himself issue one for the commune over which such mayor has jurisdiction. Thus, again, if in any commune the death rate for three consecutive years exceeds the average death rate of France the prefect of the department is to institute an inquiry. If it is determined as a result of such inquiry that sanitary works, especially water works, should be provided the prefect may force the undertaking of such works.

It will be seen from this analysis of the public health law of France that, notwithstanding the absence of all constitutional protection of private rights, private rights have been given a protection which is hardly consistent with the public safety. Before closing what is said as to the police of public health and safety in French cities mention should be made of the fact that the force for the extinguishment of fires (*sapeurs et pompiers*) is completely centralized under the prefect of the department and the Minister of the Interior. Sanitary administrative conditions in Italian cities are similar to those in France, with the single exception that the council in Italy has the sanitary ordinance power. In Italy as in France the same care is taken by the law to give the individual a judicial remedy against administrative action.

In Germany. The police of public health and safety is arranged in somewhat the same way in Prussia as in France. The police power within a city, it will be remembered, is granted either to an appointee of the central government, i. e., the police president or police director, or to the burgomaster who is appointed by the city council subject to the approval of the central government.[1] By the side of the local police authority is placed in all cities of five thousand inhabitants and over a health board which is composed of a representative of the local police authority, a representative of the city executive, appointed by it from several physicians to be nominated by the local police authority, and of three citizens of the city to be chosen by either the city council or the city executive. Finally, in places in which there is a garrison several officers from the garrison are to serve on the board as well as a representative of the military medical staff. The functions of this board would seem to be largely consultative in character.[2]

The content of the municipal police power which is vested in the police authorities is defined in the law of the 11th of March,

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[1] Mascher, op. cit., II, p. 65.

[2] Ibid., p. 68.

1850, upon police administration. This, like the French law, contains a long enumeration of objects which may be regulated by police ordinances and in addition thereto also contains a general clause; and it would seem to be considered within the power of the municipal police authorities to issue ordinances which regulate subjects not contained within the enumeration but falling within the general conception of local police.[1] Police regulations may be issued for the entire municipal district or portions thereof. The regulations which are issued must, however, be approved by certain other authorities. For example, in the case of police ordinances relative to the public safety the city executive must be heard; in the case of all other police ordinances its consent must be given, in order that the ordinance shall be valid. If the city executive refuses its consent appeal may be taken by the local police authority to the higher administrative authorities of the state whose consent and approval of the regulations will then be sufficient to make it valid. In urgent cases the local police authority may issue police ordinances without obtaining the consent of the city executive. If, however, the necessary consent is not obtained within four weeks from the date of their issue, or the consent of the higher administrative authorities is not obtained, the ordinance goes out of force. The local police authorities may impose penalties as high as thirty marks for violations of their ordinances.[2] Finally, the higher administrative authorities have always the right to annul the municipal police ordinances.[3]

The municipal police authorities have the right to issue not merely ordinances laying down general rules of conduct, but also, individual orders of special application which are directed to some one individual, ordering him to put his property in a condition which will not be prejudicial to the public health or safety. The power of the German police authorities would seem to be about the same as that of the French municipal police authorities. A decision of the Imperial German Court has held that it is within the police power granted to the municipal police authorities to prevent, under penalties, a use of property which is dangerous to life and health, even if such order will indirectly require changes in the property itself.[1] Furthermore no new building may be erected except where a permit has been granted by the police authority. But police authorities may not force a sick person to leave his or her dwelling and go to a contagious diseases hospital. The only persons who may be forced into public hospitals are homeless vagrants and prostitutes.[2] In Germany, finally, the municipal police authorities have the right, themselves, to fix penalties for the violation of their orders and ordinances. So far as orders are concerned this seems to be peculiar to the German system. As a rule the penalties for violation of orders are fixed in the Penal Code.

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[1] Ibid., pp. 147 and 148.

[2] Leidig, op cit., pp. 457–459.

[3] Ibid.

The powers which Prussian municipal police authorities have, particularly their ordinance powers, are very large. As a result of their exercise it is possible for Prussian cities with the consent of the central government to deal very effectively with problems of population congestion and housing. They can, and do, by a system of building restrictions, regulate the character of different city districts and prevent the establishment of factories in certain districts which are reserved for residences. In their action also they may be moved by æsthetic as well as sanitary considerations. It is through the exercise of these powers that Prussian cities, which in this respect occupy a somewhat peculiar position, are at the present time engaged in a process of physical reconstruction. This policy is accompanied by far-sighted consideration of the needs of future development.[3]

Methods of exercise. A word as to the way in which the powers of health and similar authorities are exercised, and as to the power the individual has to appeal to the courts from their decisions, is necessary to a correct understanding of the actual position in the eyes of the law of the authorities provided for the police of public health and safety.

The acts of individual application which may be done by these authorities may take on the form of a decision or an order. In the case of a decision no further action on the part of the authorities may be necessary in order to execute the law. Thus, if it is necessary, as is often the case in the building law, that plans must be approved before the individual may build, the decision by the building police authority approving or disapproving a given plan exhausts the legal action of the authority as to this particular matter. The law-abiding citizen whose plans have been properly disapproved will amend them to suit the wishes of the building police authorities.

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[1] "Entscheidungen des Reichsgerichts in Strafsachen," IV, 106.

[2] Mascher, op. cit., II, pp. 70, 72, 76.

[3] See *infra*, chap. XV.

In the case of an order and even of a decision, however, it may be necessary in order that the law be executed, that the building or health authorities do something further in order to enforce the law. Thus, suppose that one whose plans have been disapproved by the building authorities proceeds to build in accordance with plans which have been disapproved, or suppose a person fails to abate a nuisance which he has been ordered to remove by the health authorities. In one case the mere refusal of permission to build, or in the other the order to abate the nuisance, is not sufficient to cause the law to be executed.

There are two kinds of actions which can then be taken to execute the law. First, the police authority may proceed to execute its order by applying physical force to the person disobeying its order, by arresting him, or to the thing which constitutes the nuisance by destroying it, that is in the the case of the building, by tearing it down, or second, if the order consists in a command to do a certain thing, as for example, to put in sanitary plumbing in the place of unsanitary plumbing, the disinfection of a place where there has been a case of contagious disease, etc., the police authority may proceed to do itself the thing ordered, when the expenses to which it is put may be made either a lien on the property on which the work has been done or an obligation of the person in default. These expenses may be recovered either in an action before a court or by execution without resort to a court.

The real powers of authorities of sanitary and public safety police depend on the degree to which they may act without resort to a court of some sort for an order. Thus, if they may of their own motion order the abatement of a nuisance or the pulling down of a construction, and collect the expenses to which they have been put by the negligence or refusal of someone to act whose duty it was to act, they have very wide powers. If, on the other hand, they have in these cases to get an order of a court of some sort they are subjected to a judicial control which may greatly limit their effectiveness.

The general rule of the American law is in the first place that there is no constitutional objection to the exercise of all of these powers by administrative authorities without any judicial intervention; but that in the second place such powers are commonly granted only in the case of the removal of nuisances, and no powers are given them of collecting, without judicial intervention, the expenses to which they have been put. Such summary proceedings are not, however, permitted under the French law. Resort must be had to the courts. The only exception to this statement would appear to be in the case of imminent danger to the public. The German rule would appear to be the same as in France. In England, as has been said, the order of a justice of the peace is necessary even to abate a nuisance.

Judicial remedies. Now, in so far as administrative authorities are permitted to act in these cases of their own motion without judicial intervention, it is necessary to provide some means for a judicial review of their action. It is also necessary that such a review be provided in case of their decisions, as, e. g., their disapproval of building plans. The review may be administrative or judicial in character. That is, it may be made by an administrative superior on appeal from one aggrieved by the action, or it may be made to a court. The administrative appeal would appear to exist generally in the continent, and special and elaborate provision for it is made in Germany. It does not exist, however, in either England or the United States, except in very rare instances.

Two methods of providing a judicial review are to be found. Either the ordinary courts are given jurisdiction, or special courts, which are usually spoken of as administrative courts, are formed for this purpose. The former method is the one normally adopted in England and the United States. In England, however, of late the tendency has been to deny or to limit the jurisdiction of the ordinary courts and to make use of the court of quarter sessions, which is mainly an administrative court, and to which appeal may be taken from any of the decisions of the local sanitary authorities.[1] In the United States the courts exercise their jurisdiction by the issue of an injunction and by entertaining suits either against officers for damages or against individuals brought by the administrative department for penalties or for the expense incurred in the abatement of the nuisance.

In France, Italy and Germany, however, the jurisdiction is given to the administrative courts. In France, Italy, Germany and in England, in the case of the court of quarter sessions, the review of the courts may embrace questions of fact as well as of law. In the United States the courts, however, have to confine themselves to questions of law except in the case of actions brought by sanitary authorities to recover expenses, when they may consider the question of fact as to whether the conditions complained of were of such a character as to constitute a menace to public health and safety, but even in these cases the courts will reverse the determination of the sanitary police authorities only when that determination is absolutely contrary to the evidence. But the question as to whether the conditions complained of constitute a nuisance is often regarded as a question of law where a statute or ordinance has not clearly declared such conditions to be a nuisance.

It will be seen from what has been said that the powers of sanitary and public safety police authorities in the American cities are very large. This is due, first, to the wide extent of their powers, in which they resemble the English authorities; second, to the fact that they may proceed so frequently without resort to judicial intervention, in which they would seem to occupy a peculiar position; and finally, to the fact that their decisions are so seldom susceptible of judicial review as to the facts, in which they also occupy a peculiar position. A good example of the extent and variety of police powers of this character possessed by municipal authorities is to be found in the health provisions of the present charter of the City of New York.

It may well be doubted whether the powers possessed by these authorities in the United States, in those cases in which their powers are the greatest, are not too great. Their discretion is so wide and so uncontrolled that it offers large opportunities for official oppression and if current rumor may be credited, this discretion has in the past been made use of in many cases, not so much to protect the public safety and health as to enrich the officers of the health and building departments through the levy of blackmail, or to obtain political support for the party in control of the city government. Prussia, in which the legal conditions were at one time somewhat the same, went through much the same experience. During the reactionary period following the Revolution of 1848 these police powers were used to suppress the Liberal party; the abuse was so great that after the reorganization of Germany about 1870, administrative courts were formed to control the discretion of the police officers of health and public safety, so that these police powers should be used only in the interest of the public health and safety for which they had been given.

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[1] Husband, op. cit., p. 121.

CHAPTER XIII

THE ADMINISTRATION OF CHARITIES AND CORRECTION[1]

Early Methods. Since the time that public charity began to be regarded as an object of state action, its administration has very commonly been confused with that of public correction. During the Middle Ages the administration of public charity was everywhere regarded as a duty of the church. The admonitions of the Christian religion enjoined upon the rich the duty of giving to the poor. The mere giving to the poor by those who were able was regarded as a pious act and little emphasis was laid by the precepts of the church upon any duty of investigating into the worth of the recipient of charity. The result of such indiscriminate charity was the development of a class of professional beggars who joined to their profession of begging the incidental profession of pilfering and thieving. When the Reformation came, the ideas of the Christian church with regard to the giving of charity were very sensibly modified in those portions of Europe which gave adherence to the reformed doctrine. Indeed, prior to the beginning of the Reformation the nuisance of vagabonds and beggars had become so great that in Germany the Imperial Diet in the year 1497 ordered that only disabled persons and those unable to work should be permitted to beg, and that other beggars should be punished as vagrants. A similar ordinance of the year 1530 made it the duty of each local district to support its own poor.

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[1] Authorities: Loening, "Deutsches Verwaltungsrecht"; Leidig, "Preussisches Stadtrecht"; Fowle, "The Poor Law"; Berthélemy, "Traité du Droit Administratif"; Orlando, "Primo Trattato, etc.," Vol. VIII; Folks, "Municipal Charities in the United States," in Conferences on Charities and Correction, 1898, p. 106; Columbia University Studies in History, Economics and Public Law, Vols. VIII, p. 424; IX, p. 488; XVI, p. 475; XVII, p. 142; XVIII, p. 93; Fairlie, "Municipal Administration," chap. 9; Munro, "The Government of European Municipalities."

The policy of the Protestant countries of taking away from the monasteries their property and thus making it impossible for the poor to be supported by the church, as they had been in the past, rendered it necessary for these countries to make some public provision for the poor. The principles which underlay the system adopted were practically little more than a development of those laid down in the imperial ordinances to which reference has been made. These were the distinction between able-bodied beggars who were treated as vagrants and those unable to work, and the imposition upon the smallest localities of the burden of supporting the latter class of the poor. In Germany the provisions of the new poor laws with regard to the duty of the localities to support the worthy poor were not, however, sufficiently detailed to permit of the development of a well-regulated poor system. Further, no adequate provision was made for securing the necessary resources upon which such a poor law system might be based. Finally, the severe laws against able-bodied paupers were not capable of enforcement.

In the countries, on the other hand, which maintained their allegiance to the old ecclesiastical institutions little change in the conditions which existed prior to the Reformation was made. It is true that in France in the latter part of the sixteenth century, largely as a result of the influence of the new religious ideas, several royal ordinances imposed upon the localities the support of the poor who were native and resided therein, and forbade all persons to wander outside of the commune in pursuit of alms. As a result, however, of the conversion of Henry IV to the Roman Catholic faith, France did not follow the example of England and the other Protestant countries in establishing a poor tax and legal right to public charity, but so long as the ecclesiastical institutions possessed large amounts of property, relied mainly on them for the giving of alms to the poorer classes of the community. As a result of this development wherever public charity became a matter of public administration, the matter fell within the sphere of activity of the various localities rather than within that of the central government.

The care of prisons and places of confinement generally had also from an early period been regarded as falling within the sphere of local administrative activity. The conditions in England prior to the beginning of the nineteenth century are typical of those which existed everywhere throughout Europe and America. Here the normal prison was the county jail. As a result of the fact that the larger cities were at the same time cities of counties or boroughs of counties, the county jails in the larger cities may be regarded as municipal institutions. In addition to the county jails there were also institutions known as houses of correction or bridewells, which were likewise under the control of the municipal authorities in the larger boroughs.

The conditions of these local prisons everywhere throughout the civilized world were of the very worst possible character. They constituted one of the greatest blots on the administrative history of every country. In the latter part of the eighteenth century, owing largely to the exertions of John Howard, who had spent some time as a prisoner in the city of Brest, in France, and who had made an investigation of the prisons both of England and of other countries, an attempt was made to reform the prison administration.

Separation of charities from correction. The reform of the prison administration which has taken place in all countries of the world has been very strongly marked by a tendency to take away the administration of prisons from the control of the local authorities and to put them in the hands of the central administration. This has been done in England and the continent of Europe and to a large extent in the United States. In the United States, however, at the present time there are quite a number of the larger cities which have, as did the boroughs of counties in England prior to the reform started by John Howard, the control of local houses of detention, or of other correctional institutions. At the same time even in the United States there is hardly a state which has not taken into its own administration the more important prisons, that is the prisons in which long-term prisoners are confined.

In the cities of the United States which have retained control of correctional institutions, it has not infrequently been the case in the past and is to a certain extent the case in the present, that the administration of these correctional institutions is entrusted to the same hands to which is entrusted the administration of the charitable institutions which are supported by the city.

During the last twenty-five or thirty years, however, a serious attempt has been made to separate the administration of institutions of correction from that of charitable institutions. Of the seventy-three cities of over 40,000 inhabitants in the United States in 1890, twenty-seven made a separation of their charitable from their correctional institutions; eight did not, and the conditions in thirty-eight were not stated.[1]

Insane poor. Not only has a separation been made between charities and corrections, but very generally the attempt has been made to distinguish between the ordinary poor and the insane poor. Even in those countries such as France, where a legal right to alms is not recognized, the insane poor are regarded as especially deserving of public charity, and by the law must be supported by the public. The support of the insane poor, however, has very generally been devolved upon some organ of government having a larger jurisdiction than the municipal authorities. Thus, for example, in England, the care of the insane poor is by an act of 1890 imposed upon the county. The only exceptions to this rule are to be found in the case of boroughs which are at the same time counties. In these boroughs the borough council must either provide an asylum or make an arrangement with some neighboring county or borough for the support of its insane poor. On the continent of Europe the care of the insane poor is in principle entrusted to some larger administrative district than the city. Thus, in France, this matter is attended to by the department; in Prussia, by the province. In these latter countries, therefore, the cities as such have no administrative functions to discharge with regard to the insane poor or the criminal classes. Similar conditions obtain in most of the states of the United States, where the burden of the support of the insane poor is imposed either on the state as a whole,[2] or upon the county. In all cases where the support of the insane poor is devolved upon any one of the local corporations, such as the county in England, the department in France, and the province in Prussia, practically all that the local corporation has to do is to provide the necessary money for the support of these classes of the community. The administration of the asylums in which these persons are confined is very largely under the control of the central administrative authorities of the state, as, for example, in France and in Prussia, or is under their direct administration, as in the State of New York.

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[1] Conference for Charities and Corrections, 1898, Report on Municipal and County Charities by Homer Folks, p. 106.

[2] This is so in twenty states, of which New York is one, Ibid.

In some of the states of the United States, however, the support and administration of the insane poor are still in the hands of the city authorities. This is the case, for example, in Chicago, where the commissioners of Cook County, which is practically the same district as the City of Chicago, though the county administrative system is kept somewhat distinct from that of the city, have under their management the county almshouse, county hospital and the county insane asylum. In other cities of the United States, as for example, in Boston, while the insane poor are a city charge they are differentiated from the ordinary poor and are put under the charge of the insane hospital trustees, who are appointed by the mayor of the city. What is true of the insane poor is also in large degree true of the alien poor, who are supported by the state, though often in county or similar provincial institutions.

We may say then that the tendency of the present day is to regard the administration of correction as a function of the state, rather than of the municipality, although, particularly in the United States, a number of the larger cities still have charge of this matter. What is true of correction is also true of those branches of public charity which relate to the insane poor and to the alien poor. The only countries in the world which regard the care of the insane poor as a matter of city administration are England in the case of the boroughs of counties, and the United States in some of the larger cities. Even in England and the United States, in those states where the insane and alien poor are not attended to by the central authorities of the state government, these classes are generally cared for by the larger territorial divisions of the state and it is only because some of the larger cities are assimilated to the position of counties that they may be regarded as discharging functions in this branch of charitable administration. Finally, where the cities have in addition to the management of public charities also the management of correctional institutions, the tendency is to differentiate these branches of activity, and to put each of them into the charge of a separate authority. But again it must be remembered that this has not been done in all cases in the United States.

Legal right to poor relief. Such being the case we may perhaps with propriety confine our study to the institutions which have been established in the various municipalities, in order to give aid to the poor who are not insane and who have a settlement in the state. The methods of attending to this matter may be roughly grouped under two heads. There is a certain class of countries which are mainly at the same time Teutonic in origin and Protestant in religion, in which there is recognized either a legal right to poor relief enforceable by application to the courts in case of the refusal to grant the relief by the poor authorities, or in which, if no such legal right is recognized, a duty is imposed upon the city or other local district to take care of its own poor. In the latter case while there is no resort to the courts open to individuals to whom poor relief has been refused, the locality which is under the legal duty of supporting its own poor may be forced either through the exercise of a central administrative control or by the action of the courts, on the instance of some other authority which has given relief to one of its own poor, to reimburse such authority or to maintain one who has, as a result of legal decision, been sent to it for support.

While the Teutonic and Protestant countries thus recognize in one form or another a legal duty to support the poor which is imposed upon municipalities, the Latin countries which are at the same time mainly Roman Catholic in religion, do not generally recognize any such duty as being imposed upon any locality, and do not, except in a few unimportant cases, provide any legal poor rate or tax which may be imposed upon the inhabitants of the municipality and from the receipts of which the poor are to be maintained.

The difference in the poor law between these two classes of countries naturally has a most important influence upon the whole system of administration of public charities. For example, in the first class of countries, it is very commonly the case that provision is made for institutions of some sort in which the poor to whom public charity is given are maintained. Such a system of poor houses may be combined at the same time with the giving of out-door relief. In the countries, on the other hand, which do not recognize any legal duty as imposed upon the localities to support their poor there are no such institutions, but reliance is placed almost altogether upon out-door relief, except in the case of the sick poor for whom provision may be made through the establishment of hospitals.

Poor relief in England. With these ideas in mind, let us then take up the conditions of poor law administration in the municipalities of various countries. In England the support of the poor was by the great poor law of Elizabeth imposed upon the various parishes which existed in both the rural and the urban districts. Inasmuch as the territorial limits of the parish bore no relation whatever to those of the borough and a parish might lie wholly in a borough or partly in and partly outside of a borough, while a borough might embrace more than one parish, the burden of the support of the poor was not in any way imposed upon the borough as a borough. When the administration of the poor law under the parish officers acting under the supervision of the justices of the peace had proved itself to be an ineffective method of administering this branch of governmental activity, the Poor Law Amendment Act of 1834 provided for the combination of parishes in what came to be know as Poor Law Unions. As the unions, however, were composed of a certain number of parishes they bore no more relation to the borough than did the parishes before them. Indeed, at the present time in some of the most important English cities the boundary of a poor law union will be found in the middle of the city, all portions of the city lying on one side of this boundary line belonging to one union, all lying on the other side of the line belonging to another. Further, the Poor Law Amendment Act provided for the election of new officers who were to be known as guardians of the poor, and who had jurisdiction over the administration of poor relief within the union over which they had jurisdiction. The administrative organization provided by the act of 1834 has been much modified by the Local Government Act of 1894, but so far as the relations of the poor law union and the guardians of the poor to the borough and the borough council are concerned, they are left in practically the same condition that they were prior to the passage of the latter act. The result is that in England it cannot be said that the support of the poor is a municipal function. At the same time inasmuch as the poor law union and the boards of guardians cannot fail to have an important influence on city life, a few words with regard to the administration of this branch of governmental activity will not be out of place. The first thing to be noticed in this system is that the poor law authority is, contrary to the general rule with regard to municipal authorities, absolutely independent of the borough council and is elected directly by the people of the borough who are resident within the particular poor law union. In the second place, it is to be noticed that in accordance with the general system the administration of poor relief by these boards of guardians is subjected to a most strict central administrative control, which is exercised by the Local Government Board at London and which results in leaving very little discretion in the hands of the local authorities. In the third place, it is to be noticed that the boards of poor law guardians are little more than deliberative authorities who do not spend any great amount of time in detailed administration. This is left in the hands of a professional officer, that is, a person who receives a salary and devotes his entire time to his work, who is known as the relieving officer. Finally, it is to be noticed that as a result of the policy adopted by the Local Government Board at London in its general orders little reliance is placed upon out-door relief, but that persons who desire public relief are put, as the phrase is, to the "workhouse test," and are to be supported in the poor houses which are maintained by the boards of poor law guardians.

While the theory of the English law does not recognize any individual as possessing a legal right to poor relief, there are several cases which come perilously near to holding that a person who has been denied relief by the guardians of the poor may appeal to the justices of the peace for an order providing that the relief shall be granted. The law has also made provision for a tax for the support of the poor which has become the most important local tax in the English system. This is known as the or rate. Finally, the justices of the peace may order the re- ɔval of a pauper to the parish in which he has his settlement, m the board of guardians of the union to which the parish ongs are practically obliged to give him relief.

In Germany the general theory is that each city must relieve persons in need of help. The relief which must be given in- les shelter, the necessaries of life, care in case of sickness and ecent burial in case of death. The duty which is imposed n the city of relieving the poor is either a permanent or a porary one. The permanent relief is to be given to all persons having their settlement in the city. In the case of persons needing relief who have no settlement within the city, the city must give the relief but may demand of the area in which such person has his settlement a refund of the expenses to which it has been put in giving him the necessary relief. The amount which any city may demand of another is determined by a tariff fixed by the minister of the interior. Complaint on the part of a poor person who has been denied relief or who has been given insufficient relief may be made to an administrative court, which may order obedience to the law. Thus a legal right to poor relief is practically recognized as possessed by every poor person in need of relief who has a settlement. Controversies between poor law areas as to settlement are determined in the same way, with appeal, in case the controversy is between the areas of different states of the Empire, to the Imperial Poor Law Board. Finally, there is a distinction between the local and the state poor, the latter being the poor who have no settlement in any city or town in the state. The state poor are relieved by the state, which acts through the provincial corporations, but is in the case of German poor reimbursed by the state of the Empire in which such persons have their settlement.

The care of the poor in the cities is in the hands of the city executive, but may by a municipal resolution be placed in the hands of a municipal committee. This committee is formed, as are all of the administrative committees in the German cities, of members of the municipal assembly, of the executive and of citizens of the city appointed by the municipal assembly, except in the case of the members of the city executive, who are appointed by that body. It is very commonly the case in the poor law administration for the city to be considerably decentralized. Within the city are formed small districts over which are placed relieving officers who attend to the routine administration. Several neighboring relieving officers are then joined together as a committee, but for the districts over which they have jurisdiction, are permitted to act independently. The administrative committee for the entire city has thus merely the supervision of the administration and the decision of the more important cases. In connection with these local committees are often a number of friendly visitors who are appointed by them and whose duty it is to supervise the grant of poor relief in particular individual cases. The relief is given in money, in kind, or by sending the person to be relieved to a poor house. Out-door relief, however, seems to be more relied upon in Germany than in England.

In France. Conditions are very different in France from those in England or in Germany. The difference is very largely due to the fact that the French law does not recognize in any way any legal right upon the part of an individual to poor relief or any duty as imposed upon any locality to relieve the poor. The communes including the cities must, however, appropriate money for the support of the insane poor and dependent children who are cared for in departmental institutions. The French law, further, makes provision for a relief fund and for an administrative service for the distribution of this fund, and determines the conditions which must be fulfilled by persons in order to receive any portion of such fund. The fund is composed of certain taxes, such as a tax of ten per cent on concert tickets. These taxes are distributed between the bureaus of charity, as they are called, the hospitals and the bureaus of medical assistance. The various institutions through which the relief is to be distributed have other resources than those coming from taxes, in that they are all permitted to receive gifts and legacies, and to solicit contributions, while the city council may grant them appropriations from the city budget. Certain French cities in which the socialist party is particularly strong have taken advantage of their right to appropriate money for purposes of charity, to extend very widely the field of public charitable work. All of the institutions through which poor relief is distributed in France are corporations separate from the city corporation. The most important of these corporations is the bureau of charities which regularly exists in every city. It consists of the mayor, two members elected by the municipal council and four members appointed by the prefect of the department. This bureau administers the poor relief with the aid of a receiver who is appointed by the prefect of the department. In addition to the receiver, whose main duty is to receive and take charge of its property, it has under it either voluntary friendly visitors or salaried visitors, who attend to the work of distributing the poor relief in somewhat the same manner as it is distributed in the German cities, where, it will be remembered, much reliance is placed upon the voluntary efforts of citizens interested in charitable work. It is believed by some that the introduction of salaried visitors, which took place for the first time in the city of Lyons, has had a bad effect in introducing politics into the distribution of public charity. Under this system of semi-voluntary effort the French have been successful in keeping politics out of their charity administration.

It would seem to be necessary in order that anyone may receive relief from a bureau of charity that he shall have his settlement in the commune. This is determined by a general law and is based upon the domicile of the mother of such person at the time of his birth, in case he is a minor, or in case he has attained his majority, by a residence of one year within the commune. The relief which is distributed by the bureaus of charity is almost exclusively out-door relief.

By the side of the bureau of charities is the bureau of gratuitous medical assistance. This is formed by a common meeting of the bureau of charities and of the hospital commission. If there is no hospital commission the bureau of charities sees to the granting of medical assistance as well as to ordinary charitable relief. In case there is no bureau of charities the hospital commission discharges both functions. Where there is neither a hospital commission nor a bureau of charities a commission is formed similar to the bureau of charities for the distribution of medical assistance. Medical assistance is distributed only to those persons who have had themselves put on a list which is formed for this purpose. Only such persons may be put on this list who have a settlement in the commune as above described and who are in need as determined by the municipal council. The list is left with the mayor's secretary and published in order that the poor who have not been put thereon may make their demands to be included in the list. There is an appeal from the decision of the municipal council to a tribunal formed for this purpose. This right of appeal is the only exception to the general rule that no legal right to poor relief is recognized.

The hospital commission is formed in somewhat the same way as the bureau of charities. This commission attends to the administration of any hospital which exists in the city, but under a pretty strict central control, exercised as a general thing by the prefect of the department.

In Italy. The Italian solution of the questions relative to public charity resembles that which has been reached in France. Mere poverty gives no right to relief, and no relief is in principle granted by any public authority to any one. The duty to give medical assistance is, however, imposed upon every commune. This duty is described in the law as the duty to give medical, sanitary and obstetric relief. Its fulfillment results in the appointment in each commune, where there is no sufficient provision by private charity, of one or more official physicians and midwives whose services are at the disposal of the poor who are domiciled in the commune. Sometimes, after the French method, a list of those qualified to receive this aid is drawn up by the municipal *giunta*. In other cases this body lays down the general principles which shall govern the granting of this relief. The supervisory authority has the right to disapprove an expenditure by a commune for this purpose which amounts practically to the grant of relief to all the persons resident within the commune.

In addition to this duty of according medical relief, the communes are recognized as having the duty to provide for the poor who are unable to work, where sufficient provision for this class of persons is not made by institutions of private charity.

Apart from the aid thus granted by distinctly public agencies reliance is placed for poor relief on private charity. The law gives the government large powers of supervision over private charitable institutions, providing that where they do not fulfill the purposes for which they were founded or where they are unnecessary they may be so changed as to be made of the greatest benefit to the localities in which they were established. In exercising its power the government is enjoined to carry out as nearly as may be the intentions of the founders.

Finally, provision is made by law for the establishment of what is called a "congregation of charity" in each commune. This body is composed of a president and a number of members varying from four to twelve with the size of the commune, appointed by the municipal council. No more than half of the members of a congregation may be members of the council. The term is four years and regularly the terms of one quarter of the members shall expire every year. The congregation is to be the legal organ of every local private charitable institution which for any reason has no such organ. Such a condition of things may happen where, for example, the control of any charity is by will vested in a particular family which becomes extinct. A congregation is further declared by the law to be the organ through which the state discharges its function of protecting and representing the poor. The purpose of this provision would seem to be to provide some authority which may take charge, e. g., of bequests for the benefit of the poor, where no trustee has been provided or where the one provided has refused to serve. In its capacity as the representative of the poor it is its duty to take all necessary steps to care for the interests of orphans, abandoned children, and of the blind and the deaf and dumb. That is, the congregation is to see to it that the legal relief granted to those unable to work is obtained, and that a guardian is appointed where necessary. The congregation is also to take care of this class of persons by granting them the means of subsistence or securing them admission to some institution. These congregations may not demand money from the communes in order to discharge their duties, but must rely on their own means. The care of the insane poor is, as in most countries, devolved upon some other administrative corporation, viz., the province.[1]

Municipal charities in the United States. The relative position of the county and town in the administrative system of the states of the United States seems to have an important effect on the position of the city with regard to public charities. There is not a single city in New England of more than 40,000 inhabitants which does not do some work in the line of public charities.[2] In some cities, of course, the work which is done is more than in others. But, as a rule, every city in New England has municipal institutions for poor relief of some sort. The reason why poor relief is so generally regarded as a branch of municipal government in New England is to be found in the law imposing on each town the support of its own poor. As a city has gradually supplanted a town it has taken upon itself the town's duty of supporting the poor.

In the middle and western states the care of the poor is devolved by the general law upon the town or the county or upon both, while in the southern states, where the town does not exist, the support of the poor is naturally devolved upon the county. The result is that, as a rule, the cities outside of New England which have charge of poor relief are to be found only in the middle and western states, though more frequently in the former than in the latter, while in the southern states it is seldom the case that the city has any functions to discharge relative to the poor. This rule is of course subject to exceptions, particularly so far as concerns the cities in the middle and western states. Thus Buffalo, Rochester, Jersey City and Reading, Pennsylvania, all cities in the middle states, have no functions to discharge relative to poor relief, the matter being a subject of county administration, while New Orleans, Louisville, Richmond and Charleston, all cities in the southern states, include poor relief within their municipal activity.

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[1] Orlando, "Primo Trattato, etc.," Vol. VIII, passim.

[2] See Report by Homer Folks on Municipal and County Charities in the Congress of Charities and Correction, of 1898, p. 108. In the Appendix to this article are reports from many of the cities of the United States having a population of more than 40,000 in 1890.

The larger the cities are, the more liable they are to make poor relief a municipal function. Thus eight of the ten largest cities, namely, New York, Philadelphia, St. Louis, Boston, Baltimore, San Francisco, Cincinnati and Cleveland, manage their own poor. Of the ten second largest cities, however, only five, namely, New Orleans, Pittsburg, Washington, Newark and Louisville, have any important functions relative to poor relief, while in the remaining five, namely, Detroit, Milwaukee, Jersey City and Minneapolis, which has no almshouse but supports a hospital, and Kansas City, Missouri, poor relief is attended to by the county in which the city is situated.

Organization of city poor authority. The methods adopted for organizing the municipal poor authority vary greatly. In some cities there is a board, in others, a single commissioner. In a number of cities where there are boards the members are paid, in others they are unpaid. As a general thing where the board is large, its members are unpaid. Where, however, the board is small, e. g., composed of three members, these members are paid. The size of the city seems to have very little influence upon the organization of the poor authority. Thus in New York, Cincinnati, Cleveland, New Orleans, Pittsburg and Washington, and in the counties in which Buffalo and Milwaukee are situated, there is a single paid commissioner. On the other hand, in St. Louis, Boston, Baltimore, San Francisco, Newark, Minneapolis, and the county in which Detroit is situated, there is an unpaid board. The geographical location of the cities does not seem to have much influence on the organization of the poor authority, as the list of the cities whose names have been given shows. It may, however, be said that in general the cities of New England have adopted the idea of an unpaid board, while the cities of the southern states have adopted the idea of paid service. The only city in the south relying on unpaid service is Charleston, South Carolina. The cities in the middle states tend towards the unpaid board, while the cities of the west, like those of the south, tend towards salaried service. There are, however, many exceptions to this statement.

The methods of appointment also vary greatly. The two most common are appointment by the mayor or election by the city council with the majority slightly in favor of the mayor, which is the rule in the larger cities. In quite a number of cities the poor officers are elected by the people of the city. There are, however, almost no cities of any size which have adopted this method. In a few cases, as for example, St. Paul, Scranton and Memphis, the poor officers are appointed by the judges of some court, while in the city of San Francisco they were, prior to the present charter, appointed by the governor of the state.

The lack of uniformity on the part of different cities with regard both to the character of the poor authority and to the methods of filling the office would seem to indicate that no method as yet devised has been satisfactory. Indeed, the papers read at the various conferences of charities and correction are full of complaints as to the pernicious influence of politics upon the charities administration. But the later papers bear evidence of an improvement in conditions. This improvement appears to have been as great under one form of organization as another. The general opinion of those interested in and acquainted with the administration of city charities in the United States seems to favor a single paid commissioner. An exception might perhaps be made in the case of hospitals, which are sometimes managed by an unpaid board. This is the method adopted in Boston, Cincinnati and New York. The work of the public officials is often supplemented by private charitable associations, which provide a corps of friendly visitors. These act in harmony with the public authorities but have no official connection with the public system of poor relief, as in some of the German cities.

Nature of poor relief. The extent of the work done by the cities for the poor varies. In many of the cities of the south and west, where the legal burden of supporting the poor is imposed upon the county, the city merely supplements the work of the county by distributing out-door relief. In other cities, in addition to giving out-door relief the city government supports as well a hospital. Finally, in a very few cities, no out-door relief whatever is given; or out-door relief is confined to the distribution of coal. Such is the case, e. g., in New York, St. Louis, Baltimore, San Francisco, New Orleans, Louisville, Kansas City, Denver, Atlanta, Memphis, Charleston and Savannah. In a paper read at the conference of 1900 the statement is made that of the forty largest cities of the country only ten do not give out-door relief.[1] The greatest amount of out-door relief given by any city in one year is about $140,000, which is the amount distributed in Chicago, Detroit and Boston.

Many of the cities, of which New York is the most marked example, supplement the work done by the city through its own officers by grants of money to private institutions. In New York this grant has in recent years amounted to nearly $2,000,000, almost all of which is appropriated to the use of institutions established for the support of dependent children. Two of the cities of the United States, viz., Atlanta and Savannah, rely entirely upon this method of relieving the poor. This method of supporting the poor is liable to great abuse, both from the point of view of the city's finances and from the point of view of enlightened charity.[2]

Finally, in addition to maintaining almshouses and hospitals and giving out-door relief and grants in aid of private charitable institutions, a very few cities, among which may be mentioned New York and three cities in Massachusetts, that is Boston, Lowell and Springfield, maintain municipal lodging houses.

State control. The administration of public charities in the urban as well as in the rural districts has been within the last forty years in many of the states of the United States subjected to a central administrative control which is exercised by a state board of charities. The first state board was established in Massachusetts in the year 1863. This board originally had the supervision of both charities and correction, but by subsequent legislation its jurisdiction was confined to institutions granting poor relief only. The supervision of correctional institutions, as well as lunatic asylums, was given to another board. Similar boards have been established in twenty-five states. In some cases the state board has supervision, as in the case of the original Massachusetts board, not merely over charitable but also over correctional institutions. In a few of the states the state board is not merely a board of supervision over local charities and correction, but is also an administrative board which administers directly the affairs of either the state charitable or the state correctional institutions. Such, e. g., is the position of the Iowa board of control, which has been the subject of so much comment during the last few years.[1]

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[1] Conference of 1900, p. 182.

[2] Coler, "Municipal Government," chap. 2.

The organization of these boards is generally as follows: they are composed of a number of members chosen from different parts of the state, who receive no pay, serve for long terms which are so arranged that the terms of office of only a number of the members of the board expire at the same time, and have very commonly under them a salaried secretary who attends to the detailed work. Where the system has been the most highly organized, as, for example, in New York, the state board has under it also a corps of salaried inspectors whose duty it is to investigate the conditions of the institutions which are subjected to the supervision of the board. In other cases, that is in those states where the system has not received a high development, the work of inspection is done by members of the board themselves.[2]

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[1] Conference, etc., 1895, p. 37; 1900, p. 173; 1904, p. 167.

[2] The more detailed duties of these boards are set forth in an article by Levi I. Barbour, entitled "The Value of State Boards," contained in the Conference of Charities and Correction, of 1894, on page 9. On page 13 Mr. Barbour sets forth the duties of these boards as follows: "First, inspection and report upon all state charitable and penal institutions, all county or district jails and city lock-ups and all poor-houses. The reports include a full census of inmates, their physical, moral and social conditions, their duties and the discipline maintained and a financial statement of costs and expenses, to be used for comparison with those of other institutions. These inspections are made frequently and at unexpected times, so that an every-day condition of things may be known. Those in charge of institutions never have and never will report their own faults and failures. They seldom report any untoward influences that magnify the evils they are called upon to amend unless there is supervision and liability to criticism. This does not come so much from wicked intentions as from carelessness.

"Second, the tabulated and condensed results of inspections and reports

The work of state boards of charities is largely educational in character. In some states, however, like New York, where the state boards have attained a greater development than elsewhere, these boards have in addition very important supervisory powers.[1]

should be presented to the governor, to the legislature when in session, and to the public especially, with such advice regarding the correction of evils and the extension and direction of the work as the board may be able to give. These reports should be full and fair, praising the work when found, but without whitewash when corruption or incompetency are encountered. The public press if properly appealed to and wisely used may be made a great assistance. It is through it to a great extent that the public at large becomes interested and may be reformed.

"Third, to such boards are frequently submitted the location of state charitable and penal institutions and the plans and estimates of buildings; but they have nothing to do with the expenditure of the money, their duties being advisory and not executive. As a board is constantly traversing the state and frequently other states, visiting and examining the location, the safety and the healthfulness of like buildings and the management generally of such institutions their advice is of great use to a local board.

"Fourth, the annual estimates and demands of every nature of all state institutions, penal and charitable, are submitted to them for their advice and recommendation before presentation to the governor and legislature.

"Fifth, in some states they are authorized to convene annually for consultation with the superintendents of the poor and the county agents for the care of children."

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[1] A good description of the organization and powers of the New York State Board of Charities is found in Fairlie, "The Centralization of Administration in the State of New York," Columbia University Studies in History, Economics and Public Law, Vol. IX.

CHAPTER XIV

EDUCATIONAL ADMINISTRATION [1]

Early methods. The conditions of the municipal administration of schools can hardly be understood without a slight knowledge at any rate of the general history of education. In the middle ages the matter of education was in most European countries left to the Church. Neither the cities nor the state governments had originally any functions to discharge with regard to it. In the cities there were frequently schools closely connected with the various churches in which was given religious instruction as well as instruction in reading and writing. The instruction was not obligatory and tuition fees were demanded. This arrangement of the schools was not, however, satisfactory. As early as the thirteenth century the cities in Germany began to take upon themselves the establishment and maintenance of schools. But on account of the fear which the ecclesiastical authorities had that improper instruction would be given, the schools maintained by the municipalities were under the supervision of the Church, whose authorities practically had in their hands the appointment of teachers. In the sixteenth century largely as a result of the influence of Martin Luther the state as a whole also began to interest itself in the matter of education. The religious troubles which culminated in the Reformation brought it about that the schools which were established by the governments of the various German states were made use of to further the belief which it was recognized that the Prince of the country might impose upon his subjects, and the schools were therefore little more than, as the expression was, nurseries of religious instruction. After the Peace of Westphalia in 1648 the principle was introduced of according to the different religious confessions which received public recognition the right to form confessional sectarian schools. While the schools may no longer be regarded as nurseries of the church, at the same time the later legislation of most of the German states recognizes that the common school is as a rule formed for the children of a single religious confession, and on that account teachers who profess the creed of that confession are alone eligible to appointment in the schools.

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[1] Authorities: Loening, "Deutsches Verwaltungsrecht"; Leidig, "Preussisches Stadtrecht"; Morgand, "La Loi Municipale"; Berthélemy; "Traité du droit administratif"; Orlando, "Primo Trattato, etc."; Craik, "State and Education"; Rollins, "School Administration in Municipal Government"; Fairlie, "Municipal Administration"; Munro, "The Government of European Municipalities"; Webster, "Recent Centralizing Tendencies in State Educational Administration," Columbia University Studies, VIII, No. 2.

In England. Similar conditions existed in other parts of Europe. Thus in England even as late as the beginning of the nineteenth century the government did nothing whatever either in its central or its local organization with regard to education. What schools there were were purely private schools and supported in large measure by the various religious denominations. The jealousy which existed between the established Church and the dissenting religious bodies made it impossible for the government to do much with regard to schools until late in the nineteenth century. There were formed, however, both in the established Church and among the dissenting bodies, large school societies with resources coming almost entirely from private subscription, which set to work early in the century to provide schools in the various districts throughout England. These schools, however, were of a decidedly sectarian character. About the middle of the nineteenth century the central government adopted the policy of making appropriations to aid schools. These appropriations were granted upon the condition that the schools which received aid should fulfil certain requirements. This policy was continued for about a third of a century, the requirements becoming more and more severe, and consisting as a general thing in the passage of certain examinations by the scholars in the various schools. The grants also were conditioned upon the fact that the teachers in the various schools had certain certificates. In 1870, however, an act was passed providing for public action upon the part of the various localities in the kingdom. The Act of 1870 provided thus, that every municipal borough should constitute a school district. Provision was made for the election of a board in each school district where it was believed that there were not sufficient school accommodations for the children. This fact was to be determined largely by the new education department, which was a committee of the Privy Council. Where it was determined that there were not sufficient accommodations the school board, which was elected by a system of cumulative voting, in order to provide representation for ecclesiastical minorities, was authorized to build school houses and establish schools, which came to be known as board schools, as distinguished from the semi-private schools which had theretofore been established. Such school boards had the right to determine the amount of money to be spent upon the schools and the municipal council of the borough was then required to insert a sufficient amount in the borough rate which they were authorized to levy to provide the money which the school board had declared to be necessary. These school boards, however, were treated by the central government in exactly the same way as were the authorities having control of the semi-private schools to which reference has been made. That is, the central government gave them grants in aid provided that they satisfied the requirements contained in the regulations of the central supervisory department. In order that the central government might satisfy itself that the requirements which it laid down were complied with it provided a set of inspectors appointed by it, who went about the country inspecting and reporting upon the schools subject to their jurisdiction.

The result of this legislation then was that up to the beginning of the present century in the various municipalities of England there were either semi-public schools supported largely by private contributions or board schools supported by local rates. With the management of these schools, however, the municipal government had, until 1902, nothing to do. The only case in which a borough council had any functions whatever to discharge with regard to the schools was in municipal boroughs where there were no board schools, and where there were as a result no local school boards. In such case the borough council was to provide a committee, which was known as the school attendance committee, whose duty it was to see that the compulsory education law was carried out. Where there were board schools this duty was attended to by the school boards, which had, subject to the supervisory control exercised by the educational department of the Privy Council, absolute control of the school system, and appointed all the teachers. In order, however, to receive the aid given by the central government they must appoint only those teachers who were regarded by the central government as properly qualified. As a general thing qualification was shown either by a course of instruction in the normal school provided by the central government or by an examination.

Education Act of 1902. The whole system of city schools in England was changed by the recent Education Act passed in 1902. By the provisions of this act the council of every borough with a population of over 10,000 inhabitants is made the local educational authority. It has power, as such local educational authority, to administer the affairs of the elementary schools and to perform such functions with regard to other educational institutions as it deems proper. It may even provide for city colleges. In order to permit it to discharge these functions it may borrow money within certain limits, fixed by the Education Act of 1902 and the Local Government Act of 1888, and may impose local taxation.

The borough council, as the local educational authority, is to establish an education committee in accordance with a scheme to be made by it and approved by the central board of education. This committee shall be constituted as to at least a majority of its members, of members of the council, and of other members appointed on the nomination of other bodies, who shall be persons of experience in education and acquainted with the needs of the various kinds of schools in the borough. Provision shall be made for the inclusion of women as well as men among the members of the committee.

To this committee the council shall refer all matters relating to the schools except the power of raising local taxes and borrowing money, and before exercising any powers relative to education, shall, unless, in their opinion, the matter is urgent, receive and consider the report of the education committee with respect to the matter in question. In addition to the reference of all matters to the education committee, the act permits the council to delegate to such committee, with or without any restrictions or conditions, as they see fit, any of their educational powers except those affecting school finances.

For each of the schools provided or maintained by the municipal educational authority there is a board of managers, consisting of such number of managers as the council shall determine. In the case, however, of public elementary schools, not provided by the local educational authority, but maintained partly from the receipts from private foundations and partly from government subventions, there shall be a body of managers consisting of a board of foundation managers, who shall be elected in the manner provided by the deed of trust of such school, in case such deed of trust is not modified by the central board of education, together with a number of managers, not exceeding two, appointed by the borough council.

The borough council shall have the right to adopt regulations with regard to the management of the schools provided or maintained by them, including directions with respect to the number and qualifications of the teachers to be employed, and for the dismissal of such teachers, and if the managers of any particular school shall fail to carry out any such directions the borough council shall, in addition to its other powers, have the power themselves to carry out the directions in question as if it were the managers. The borough council shall have power also to inspect all schools. Its consent shall be required to the appointment and dismissal of teachers.

The Education Act of 1902 is framed with the intention of maintaining in existence, so far as possible, without duplication on the part of the city authorities, the schools which have been founded and carried on as the result of private initiative. At the same time, inasmuch as such schools receive large grants from the government, the attempt is made to subject them much more than they were prior to the passage of the act, to the control of the borough council and its educational committee. The result is a great complexity in the system. It is impossible to understand the provisions of the Education Act of 1902 without studying the history of the school system during pretty nearly the entire nineteenth century. It is hoped, however, that what has been said will be sufficient to give a general idea, at any rate, of the relations which the city authorities now have with the school system. The Act of 1902 has certainly done much to make the care of the schools a municipal function. It has, however, apparently, in no way done away with central supervision, which is directed mainly towards securing certificated teachers and a reasonable uniformity of methods of instruction. The means by which the central control is exercised are mainly the grant of funds by the central government to schools, both those provided by the city authorities and those provided by private initiative.

In France, as in England, education did not become an object of solicitude on the part of the government until the nineteenth century. In the middle of that century, however, the French law permitted all communes to provide for institutions of secondary instruction and in the year 1882 the state took the matter of primary education in hand. The whole educational administration in France is, however, regarded more than elsewhere as a matter of general state concern. The only functions which the municipalities discharge with regard to it are the provision of the necessary school buildings, which is imposed upon them as a duty, the provision of a school commission, which is largely composed of members of the municipal council and whose duty it is to see that all children within the municipality receive the instruction made necessary by law (it is said, however, that these commissioners very seldom do any work), and in the third place the provision of high schools for boys. This is not, however, a duty which is imposed upon the city by the law. In case cities make provision for institutions of secondary instruction they receive the revenues which come from the school tuition fees and disburse the necessary expenses.

In all cases, in the case of both the lower schools and the higher schools, the control of the physical as well as of the educational administration of the school is vested in officers of the state government. The state has provided a very elaborate system of school administration, beginning with the department of public instruction. At its head is a minister who is a member of the cabinet, with several councils by his side, and included among his subordinates are the prefect and a departmental school board and a rector, as he is called, of the academy, that is an administrative division for the purposes of instruction, and an academic council. As a general thing the supervision and in large part the direct management of the lower schools are vested in the prefect, who has among other duties, the power of appointing all the teachers in the lower schools. The supervision of secondary schools is in the hands of the rector and the academic council. The result is that the duties of the municipalities with regard to schools are practically of little account, the matter being, as has been said, assumed by the state administration.

In Italy conditions are somewhat the same as in France. The whole matter of education is regarded as a state rather than a local matter. But in the case of the elementary schools, which cities are obliged to maintain, the city governments have slightly greater powers than are possessed by those of France. The law makes it obligatory upon the city council to establish a school board. This is composed of the mayor or assessor assigned to the schools, who presides, the health officer, and one or more persons chosen by the city council from among the inhabitants of the city, women being eligible. This body has rather indefinite powers, being a supervisory and advisory rather than an administrative body.

In Germany the introduction of the principle of compulsory education, which it may be mentioned has been adopted everywhere, made it necessary to adopt also the rule that no one should be denied entrance to a public school on account of his religious belief. The difficulties arising from the presence of sectarian schools resulted also in some states in the attempt to form unsectarian schools to which teachers without reference to their creed might be appointed, and where religious instruction might be given by all denominations at a time which was different from that in which the regular instruction was given. In most states, however, it is said that even at the present time the system of confessional or sectarian schools is still maintained.

The introduction of the principle of compulsory education made it necessary also that the state should make some provision for schools in which the children of the poor might be educated. In the south of Germany as a general thing this duty of providing the necessary schools was imposed upon the various local communities including among them the cities. In the north of Germany, however, and in Prussia there were formed special unions or corporations for this purpose. These were largely sectarian in character and consisted of all those persons belonging to a given denomination living within the school district, who were obliged to pay taxes for the support of particular schools. In addition to the money derived from these school taxes the children who came to the schools were obliged to pay certain school fees, while finally, the state was to grant certain subsidies in aid of the duties thus imposed upon the school corporations. In a number of the provinces of Prussia, however, the burden of supporting the schools is by provincial by-law imposed upon the cities within the province. As a result of this rule and as a result of the voluntary action of other cities it is said that at the present time most of the cities of Prussia have taken over the schools as a branch of municipal activity. At the same time prior to this action on the part of the municipalities, many of the school corporations had received by gift or bequest large amounts of property; as a result, each one of the schools within a city is treated somewhat as a separate organization with its own resources. Accounts are therefore to be kept with each of such institutions.

School board in Prussia. Whatever may be the conditions of the schools in a city in this respect, there is in every city a city school board having some control over all the schools of the city. The city school board consists of two government school inspectors, a representative appointed by the central government for each of the schools which are not under municipal patronage, and from three to nine elected members, of whom one-third belong to the city executive and one-third to the council, while the last third are chosen from among the citizens of the city who are believed to be somewhat expert in school matters. The members of the city executive and of the council are chosen in the same way as are the members of other executive departments, but need the approval of the central government. These members propose to the central government three candidates for each of the places which are filled by the citizens at large, and from the three thus chosen the government appoints one as a member of the school board.

This school board supervises the private schools in the city and administers the affairs of all the lower public schools. So far as the higher public schools are concerned, this board has charge merely of their physical administration. The educational administration of the higher schools is entrusted to the principals of the schools who are subject to the supervision of the provincial school board. Within the limits of its jurisdiction the city school board has the administration of school property and the regular execution of the school budget, must see that the laws and ordinances of the state are followed, keep the teachers up to the performance of their duties, and see to it that the children regularly attend school. The members of the board are expected in order to perform their duties to visit the different schools at regular intervals and every year to present to the city council, of which they are regarded to be merely a department, a detailed report on the conditions of the schools within the cities. This report is also to be sent to the government. The school board is often assisted in the performance of its duties by local volunteer unpaid committees each of which devotes attention to some one school. The arrangement resembles the arrangement referred to in the field of public charities.[1]

The expenses of the school administration are defrayed in the first place from the income from the school property. It will be remembered that in many cases the schools have their own property. In the second place the cities are by law obliged to take upon themselves the burden of the support of the lower schools and are permitted to receive the income from the schools, which, however, does not amount to much at the present time, inasmuch as very generally the school tuition fees have been abolished. In the third place the state government grants subsidies to the schools largely for the purpose of helping them in the payment of the teachers' salaries.

The cities are obliged to build the school buildings and provide as well the necessary residences for teachers. They may be obliged by the state supervisory authorities to fulfil their duties in this respect, but if there is any conflict between the supervisory authorities and the cities, the cities are permitted to appeal to the administrative courts to obtain a final settlement of the matter.

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[1] Schriften des Vereins für Socialpolitik, Vol. 123, p. 217.

Duties of Prussian cities. While the cities are thus by law obliged to maintain the lower schools, there is no obligation imposed upon them with regard to the higher schools. They may, however, with the consent of the central school authorities of the state, that is the department of public instruction, establish higher schools which are known as advanced schools[1] (*fortbildingschule*), and *gymnasia*, or *realschule*. There seem to be three kinds of higher schools in the cities: first, those which have been established as a result of private initiative and are regarded as foundations; second, schools established by the central government, and third, municipal schools. The permission to establish such schools is granted only in case it is shown to the state department of public instruction that the city has made ample provision for those schools which it is its duty to support and that the city is prepared to maintain the high schools in a condition which complies with the demands of the central authorities. In this case the rules which are established by the city for the management of the schools and the school budget are to be approved by the central authority and the school when it is thus established is regarded as a juristic person, that is, it is a corporation which may receive gifts and legacies from private persons.

The school system, it will thus be seen, is a combination of private initiative and governmental, generally municipal governmental, action. But whatever may be the character of a school, that is, whether from the point of view of its resources, it is governmental or private, it is in all cases subject to state supervision. The supervision which is exercised thus over the school system is exercised in first instance by the state department of public instruction, that is, the ministry of educational, ecclesiastical and sanitary affairs. In every one of the provinces into which Prussia is divided there is in the second place a provincial school board of which the governor is president. This body has the supervision over the higher schools and the instruction of teachers. Each province is divided up into districts at the head of which is a board known as the government, whose members consist of persons belonging to the higher administrative service, are professional in character, permanent in tenure and are appointed by the Crown. In each one of these boards there is a committee whose function is the supervision of the conduct of the schools. As a general thing this committee has under it inspectors for each one of the divisions into which the district is divided, namely, circles. Inasmuch as each city of over 25,000 inhabitants is exempted from the jurisdiction of the ordinary circle and forms a circle by itself, each one of such cities has such a circle inspector.[1] In addition to the circle inspectors there are also local inspectors corresponding somewhat to city or county superintendents in the United States; these officers are appointed by the central government, and, as well as the circle inspectors, are members of the school boards in the various cities. Although there is no law requiring the central government to make the appointment of these inspectors from the clergy, as a general thing such officers are appointed from the clergy, who thus maintain a practically large influence over the management of the schools.

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[1] The Prussian city may by local ordinance oblige its youth to attend these "advanced schools."

All teachers are educated in the normal schools and receive there both a theoretical and practical instruction, it being provided that they shall teach in what may be called experimental schools before they receive their certificate. This certificate is granted after an examination which differs in accordance with the grade that the individual candidate seeks to obtain.

The actual appointment to a position in a school is as a general thing made by the local municipal authorities, although their action needs the approval of the central state government, which in the case of principals and teachers in the higher schools is granted either by the provincial school boards or by the Crown. The salaries are fixed by the general government, and it is not permitted to the localities to attend to this matter. The same is true of pensions which are generally granted to teachers after a certain number of years of service, and also to their widows and children in case of their death in the school service.

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[1] The circle is the district smaller than the governmental district.

In the United States. The cities of the United States did not take up seriously the matter of public schools until about the middle of the nineteenth century. Since 1850, however, it may be said that in almost all the cities of the United States a great deal of money has been expended by the city governments in the establishment and maintenance of rather elaborate school systems.

In addition to maintaining schools for the education of children and, in a number of cases, of illiterate adults, the cities of the United States have in many cases established, either in close connection with their school systems or separate therefrom, public libraries and museums. In some cases, further, they make provision for quite elaborate courses of public lectures. Finally, a very few of the cities support, as well, institutions of higher instruction. Thus, for example, the City of New York maintains the College of the City of New York, an institution of higher instruction for boys, while the City of Cincinnati gives considerable aid to the University of Cincinnati.

School boards. Whatever may be the extent of the work of the city in the field of education, the school authority, which in all cases has charge of the primary and secondary schools and in some cases as well of other educational institutions, is a board of education or a school-board. In only one city of importance, namely, Buffalo, is the matter in the charge of the city council. In this city a committee of the council performs the duties which in most of the cities of the United States are attended to by the school-board. The cities of the United States in which there is a school-board separate and apart from the council, may be put into two classes: in the first class are to be included those in which the school-board is regarded as a department of the city government; in the second, those in which the school-board is treated not as a department of the city government, but as a public corporation separate and apart from the corporation of the city. In this last class of cities the board, however its members may be appointed, has in its own control the raising of the funds which are necessary to carry on the schools under their charge, as well as the uncontrolled expenditure of these funds. This is the position of the city school authority in Cincinnati, Pittsburg, Indianapolis, Denver, Toledo, Allegheny, St. Louis, and other cities. Even in this class of cities, however, the collection of the taxes which have been voted by the school-board is frequently a function of the city government. It is seldom, if ever, the case that a city school-board, no matter how wide its powers, has the same functions which, for example, the school-district has in the State of New York, where the power not merely of voting, but of assessing and collecting the school taxes is devolved upon the school trustees and their subordinate assessors and collectors.

In the cities which treat the school-board as a department of the municipal government, the functions of the board are very nearly the same as the functions of the ordinary head of department with reference to his department. That is, the school-board makes up its estimate of the amount of money which it thinks it will require in order to carry on the schools for the coming year, and this estimate is subject to revision by the authority of the city government which ultimately determines the amount of money to be spent by the city departments. This is the position occupied by the school-boards in Chicago, Philadelphia, San Francisco, Milwaukee, Newark, Louisville, Providence, St. Paul, and other cities.

In some of the cities peculiar arrangements have been made which cause the school-board to approximate more closely to the type to which, from the general point of view, it does not belong. For example, in the city of New York, which, as a general thing, treats the board of education as a department of the city government, a statute provides that a certain tax must be levied, by the authorities having the taxing power, for the support of the teaching and supervising officers of the schools, whose salaries are fixed by state law. The amount of money which may be spent on this branch of educational activity is thus taken out of the hands of the ordinary municipal authorities and, within the limits of the law, vested in those of the school-board, although from other points of view the school-board is little more than a department of the city administration.

In all cases, however, it will be noticed that the school authority is a board. The reason for this universal departure from the type of municipal departmental organization generally approved at the present time in the United States is to be found in the desire to keep the schools out of politics and interest as many persons as possible in their management. The schools are believed to be kept out of politics through the provision that the members of the board shall not hold terms which expire at the same time. Every year or two years, or whatever term may be determined upon, a certain number of the members of the board are renewed. It will thus take a number of years before any one political party can obtain control of the school administration.

The position which has been assigned to the school-board has an influence upon the method by which the members of the board are selected. If the school-board belongs to that type, the characteristic of which is that it is in the nature of a special corporation separate from the corporation of the city, the members of the school-board are in almost all cases elected by the people. Even in the case where the school-board is treated merely as a department of the city government, the principle of election is also in some cases adopted. Indeed, fifty-five cities in the United States choose their school-boards by election. In those cities which treat their school-boards as a department of the city government, the tendency, however, is toward providing that the members of the board shall be appointed by the mayor and council or by the mayor alone. While election by the people and appointment by the mayor, either with or without the approval of the council, may be said to be the prevailing methods for filling the position of member of the school-board, in some of the most important cities of the United States a departure is made from these methods. Thus, for example, in the city of Philadelphia the school-board is composed of one member from each of thirty-six sections into which the city is, for the purpose of school representation, divided, and these thirty-six members are appointed by the judges of the state court of common pleas. In New Orleans also the members of the city school-board are in large part appointed by the governor of the state.

Where the school-boards are elected they are elected either by general or by district ticket. Of the fifty-five cities in the United States electing members of the school-board, twenty-four elect from the city at large, twenty-eight from the district, and three by a combination of these plans. The largest cities have generally adopted the general ticket. This is the case, for example, in St. Louis, Boston, Cleveland, Minneapolis, Kansas City, and other less important cities. In some cases the election is held at the same time as the general state election or the municipal election, if that is separate from the general state election, while in other cities the election takes place at a special time appointed for the particular purpose of school elections. In a number of the cities provision is made for local boards which sometimes, as in Philadelphia and Pittsburg, have very large powers, and in others, as in New York, have merely supervisory and consultative powers.

The size of the school-board depends upon the extent to which the principle of interesting as many persons as possible in the management of the schools has been applied. This would appear to have been the principle whose application was the most desired for a long time in the history of our municipal educational administration. Within recent years, however, particularly in the larger cities, the feeling has become stronger that what is needed is not so much popular interest in the schools as efficient school administration. The growth of the belief in the necessity of efficient school administration has resulted in lessening the number of the members of the school-board. The number varies from forty-six in the case of New York to four in San Francisco. The tendency is toward a small board. Thus quite recently the San Francisco board was reduced from twelve to four; that of Baltimore from twenty-nine to nine; that of St. Louis from twenty-one to twelve; that of Indianapolis from eleven to five; that of Milwaukee from thirty-six to twenty-one; that of Atlanta from fourteen to seven. In some of the cities

the number of the members of the board is very small,
aries are paid, as in San Francisco. As a rule, however,
rvice as a member of the school-board is unpaid.

School superintendents. When city schools were originally
stablished, the school-board had practically complete charge
ver both the physical and educational administration of the
s. Within recent years, however, there has been a tend-
y toward a differentiation of these functions with the result
he school-board has, in the cities which are regarded as
best school systems, been confined to the management
nysical administration of the schools. The educational
tration has been granted to a professional expert force,
n of which is placed a superintendent of schools or
r. The superintendent of schools seems to have de-
out the middle of the nineteenth century. Most com-
ticularly in the larger cities, this officer is appointed
l-board; in some cases, however, he is elected by the
of the city. In either case his term is usually a fixed
one, varying from six years, as in New York, to one year, as in
Philadelphia. As a general thing, his term is three or four
years. The superintendent usually has the power of recommending the appointment of teachers who are appointed by the school-board. Generally, the power which appoints the teacher is confined in its selection to those persons who have teachers' certificates. These are granted only after an examination which sometimes, though not usually, is competitive.

There is a tendency at the present time—not, however, very marked in character—to differentiate the administrative from the legislative side of the physical administration of the schools, and to confine the action of the school-board to the legislative part of the work. Such a differentiation was recommended by the committee of fifteen appointed by the National Education Association for the drafting of a model municipal educational system. The differentiation of the administrative from the legislative side of school administration is the theory of the system adopted in Indianapolis. In this city there is a school-director, who is elected by the school-board, and has charge of the administrative side of the physical administration of the schools. He occupies somewhat the same relation to the school administration that the mayor, under the ordinary municipal charter, occupies with reference to the general administrative system of the city. Thus he has a veto over the acts of the school-board which may be overcome by a repassage of the act vetoed.

While the differentiation of the legislative from the administrative side of the physical administration of schools has not received any very wide application in the United States, its adoption is interesting and significant. When taken together with the other developments in school administration it cannot fail to leave the impression that the school-board is succumbing to the same influences that destroyed the city council, and that in time there will be a school department with a single commissioner at its head, having toward the school department about the same powers and duties that the single commissioner or other executive department head has toward his department. Reduced in numbers, in some cases composed of salaried members, its educational functions lost to the superintendent, its executive functions going to a director, the school-board will not have enough to do to attract men who are interested in the schools and will soon come to occupy, if the movement keeps on at the same pace, a position of as little influence as that which has been accorded to the city council by the charters of many American cities.

Central control. The same tendency toward the subjection of the city in its management of schools to the control of the state, is evident, as is seen, in the relations of the state toward the charitable work of cities. In most of the states of the United States there is an officer known as the superintendent of public instruction, or superintendent of common schools, to whom is given a large power of supervision over the cities in their discharge of their school duties. In a number of states there is not only a state superintendent of education—there is, also, a state board of education, which has certain functions of supervision to discharge. The powers of the state officers over the local management of schools relate to compulsory education, the state regulation of text-books and courses of study, and state control of teachers' examinations.

The methods by which the state supervisory educational officers exercise their control over the local management of schools are: first, the power to withhold the aid which is granted by the state to the localities; and, second, the power to hear appeals from the decision of the local school authorities. In a few states the state superintendent has also important powers of removing local school officers, and of obliging delinquent localities to take the action which is necessary in order that the schools may be properly conducted. The extent of the powers possessed by the state supervisory officials and the means by which they may exercise their powers, vary, of course, very much from state to state. Probably in no state would the supervisory state officers have all the powers to which reference has been made. The state in which the powers of the superintendent of education, or similar officer, are greatest is, perhaps, New York. Here the state superintendent has large powers of removing school officers, of hearing appeals from the decision of local school officers, of enforcing a uniform course of study, and of examining and licensing teachers.

CHAPTER XV

LOCAL IMPROVEMENTS [1]

Effect of urban growth. Attention has been called to the fact that it was not until the end of the eighteenth century that European cities began seriously to take up the matter of local improvements. Up to that time cities had very commonly been struggling for the right to exercise those powers, the exercise of which the commercial classes, i. e., the urban population, regarded as necessary for the development of commerce and its attendant industry. It has also been shown that with the widening of commercial interests and the improvement of the commercial law these powers were assumed by the state. This widening of commercial interests of itself, however, had for its ultimate result an increase of the sphere of municipal activity notwithstanding this loss of powers. For it caused a concentration of population which made necessary the grant of new powers to the cities.

At first, however, the attempt was made to forbid by law the growth of cities. Thus as early as 1683 the attempt was made in a royal decree to fix boundaries for Paris, beyond which buildings were not permitted to be erected. This decree sets forth the disadvantages resulting from the growth of the city as follows: "That by the excessive aggrandizing the city, the air would be rendered more unwholesome and the cleaning of the streets more difficult; that augmenting the number of inhabitants would augment the price of provisions, labor and manufactures; that it would cover the space of ground by buildings that ought to be cultivated in raising the necessary provisions for the inhabitants and thereby hazard a scarcity; that the people in the neighboring towns and villages would be tempted to come and fix their residence in the capital and desert the country round about; and lastly that the difficulty of governing so great a number of people, would occasion a disorder in the police and give an opportunity to rogues and villains to commit robberies and murders both by night and by day within and about the city." It is needless to say that such an attempt was a vain one. The limits of the city were extended by decree in 1724. But the attempt to limit the size of the city was not abandoned. The decree of 1724 like that of 1683 again fixed the city limits and advanced reasons for this action similar to those set forth in 1683. The decree of 1724 also calls attention to the fact "that the going oftentimes in one day from one end of the city to the other, which the people in business are frequently obliged to do, would be rendered very fatiguing and consequently the facility of their mutual intercourse and communication would be greatly interrupted."[1]

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[1] Authorities: Lister, "An Account of Paris," etc.; Mildmay, "The Police of France"; Smith, "The Topographical Evolution of Paris," in House and Garden, Vol. VI; Hurd, "Principles of Land Values"; Robinson, "The Improvement of Towns and Cities"; Lunn, "Municipal Lessons from Southern Germany"; Fairlie, "Municipal Administration"; Whinery, "Municipal Public Works"; Municipal and Private Operation of Public Utilities, National Civic Federation Report, Vol. I; Rowe, "Problems of City Government"; Bres, "De la Municipalization des Services d'Intérêt Public en Italie"; Ogeran, "Le Developpement des Services Municipaux."

The concentration of population could not be resisted and cities all over Europe, particularly the political capitals, had therefore to begin to grapple with the problems which this inevitable and irresistible increase in population presented. It must not be supposed, however, that prior to the end of the eighteenth century nothing was done in cities in the nature of public works to improve the conditions of city life. We have two interesting accounts of conditions as they existed in Paris at about the beginning of the eighteenth century, which prove the contrary. The one was written in 1698 by Dr. Martin Lister, who attended the Earl of Portland in his embassy to France to negotiate the treaty of Peace of Ryswick;[2] the other is said to be written by W. Mildmay and was published anonymously in 1753.

Early methods. A perusal of these books will show that even as early as the beginning of the eighteenth century Paris had made some provision for a public water supply. This consisted of three small aqueducts supplemented by pumps which drew water from the Seine. That these were inadequate is shown by Mildmay's statements that generally water is conveyed to the inhabitants "by pailfulls sold about the streets as milk is in London,"[1] and "that no inconsiderable number of people are employed in thus carrying about what is so universally wanted. . . . He, therefore, that would propose any other method of conveying water into the houses must previously point out some other means of subsistence for the numbers of people who at present gain their livelihood by this method."[2]

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[1] Mildmay, "The Police of France," London, 1753, p. 131.

[2] "An Account of Paris at the Close of the Seventeenth Century," etc., London, Longman and Co.

Similarly crude attempts were made to provide for street paving, cleaning and lighting. Originally every inhabitant was obliged in Paris, as in London, to pave the street or a portion of it in front of his house. The inconvenience of such a method, on account of the unevenness and want of uniformity in the pavement led in Paris to a change as early as 1609, when the care of the paving was put into the hands of the city authorities and the expense defrayed by a tax placed on each house in proportion to its front on the street. In 1640 the city defrayed the expense out of the proceeds of a tax paid on merchandise brought into the city. The actual work of paving was done by contract made in great detail as to the size of stones and the method of laying them. The contractor was aided in the performance of his contract by a law imposing the obligation on all wagons coming into the city to bring in a certain quantity of paving stones, which were to be delivered gratis at the city limits. This method of caring for street paving was still in force at the end of the eighteenth century.

Similar methods were adopted for cleaning the streets. In 1666 the King decreed that a tax for this purpose should be imposed on every house in proportion to its front. The actual cleaning was let out by contract to the lowest bidder. The contractor was obliged to collect the heaps of dirt swept up by the householders, who were required to sweep the street in front of their premises. Half an hour before the carts came along a bell was rung so as to give warning of their approach. Mildmay, from whose book this description of street cleaning methods is taken, adds: "But with regard to the dirt and mud in the middle of the streets, other tombrels are employed, at stated hours, every morning and afternoon, both in summer and winter, to sweep and throw into their tombrels, whatever they may be able to contain according as the weather may be wet or dry; particularly they are to be more assiduous in their duty in hard winters, to carry off or sweep into the kennels, all the ice or snow that may fall; for which extraordinary duty, whenever it happens, they are allowed a gratification at the end of the year, over and above their annual salary."[1]

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[1] Mildmay, "The Police of France," etc., p. 95.

[2] Ibid., p. 97.

The expense of lighting the streets was defrayed also from the receipts of a tax imposed on the householders. Mildmay says: "Two persons are generally contracted with for this undertaking; the one to find the lanthorns, cords and pullies; and the other to supply the candles: for the streets are here illuminated by hanging lanthorns on the middle of a cord that reaches cross the street; and is fixed to pullies on each side, at about fifteen feet high and about fifteen yards distance from one another. There are 6500 lanthorns, and consequently as many candles consumed every time they are lighted, which is only twenty times a month, being laid aside during the moon-light nights; and are never lighted, but from the last day of September to the first day of April each year; being taken down and set apart during all the summer months." Elections were held annually in each quarter of the city by the householders. The persons elected had each charge of fifteen lanterns and paid, as Mildmay puts it, "some menial servant or poor housekeeper in the same street to perform the duty; accordingly every evening, as soon as it begins to grow dark, the commissary sends out a person, ringing a handbell through the streets of the quarter to give notice, as in the morning for cleaning the streets; so now for lighting them; upon which each *lanternier's* servant immediately sallies out and having a key to the iron box in which the end of every cord is fastened on the sides of the streets, lets down the lanthorn hanging on the same, and fixing his lighted candle therein draws it up again; and thus everyone having only fifteen lanthorns under his care, the whole city is illuminated, in a very short space after notice; though the light itself is indeed a very indifferent one."[1]

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[1] Ibid., p. 120.

City topography. While cities like Paris had thus as early as the beginning of the seventeenth century made attempts to provide themselves with some of what we now regard as the conveniences if not the necessities of modern urban life, little if anything had been done to make city life much more than endurable. Even so late as 1853 when Napoleon III and Haussmann began the reconstruction of Paris, "the streets in the old city within the *enceintes* were in a shocking condition. In one the houses on opposite sides leaned against each other; in another two persons could not pass abreast; in nearly all the gutter was in the middle; very few had sidewalks."[2] But as early as the days of Louis XIV plans had been made for laying out the district outside of the city wall. Those plans were followed and applied to the interior of the city by Haussmann, who made Paris what it now is.

Perhaps no better idea of the growth of a city can be obtained than that derived from a study of Paris. For Paris is the model upon which the modern city is being constructed, and of the growth of few cities do we have such definite knowledge as of that of Paris. We have, it is true, no maps of the city antedating the time of Francis I. More or less successful attempts have been made, however, to construct from other data maps which depict Paris at various periods from the time when during the early Roman period it occupied merely the island in the Seine which now forms the heart of the great city. Lutetia Parisiorum, as it was called, was founded on this island evidently to secure protection against hostile attack. It was traversed by a road running north and south, which even now forms one of the important streets of the city. To the north of the Seine this road was crossed by another road running east and west about parallel with the Seine. These two roads formed what was known in the Middle Ages as the great cross—*la grande croisée*. From their intersection branched other roads at an angle to the northwest and northeast. On the south of the Seine another road branched off to the southwest. The city even during the days of the Roman Empire seems to have extended on both sides of the river particularly to the north, and naturally grew along the lines of the main roads. A glance at the maps shows also that at the intersection or unions of such roads there sprang up little settlements, each of which was a center of growth. From these centers the agglomerations of houses extended until all distinction between them disappeared.

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[1] Ibid., p. 122.

[2] E. A. Smith, "The Topographical Evolution of the City of Paris," House and Garden, Vol. 6 (1904), p. 287.

When the peaceful days of the Roman Empire disappeared fortifications were built to protect the inhabitants. These fortifications were pulled down and others placed further out, as the city extended, the place they occupied being taken by new streets. We find, therefore, a series of concentric circular streets forming main thoroughfares, in addition to the diagonal streets due to following the original roads which have been described. Such was Paris until about the time of Louis XIV. It had grown comparatively symmetrically along the lines of travel and from the outlying centers and had been able to do so because of favorable topographical conditions. The country immediately adjacent to the Seine was comparatively level, the only hills in the river valley being quite a distance from the river itself. The only thing which interfered with its natural growth was the necessity of fortifications, the influence of which has been noted. The growth of Paris would thus appear to have followed causes which should operate under similar conditions. Mr. Hurd in his "Principles of City Land Values."[1] says: "A cursory glance reveals similarities among cities and further investigation demonstrates that their structural movements, complex and apparently irregular as they are, respond to definite principles. . . . Cities originate at their most convenient point of contact with the outer world and grow in the lines of least resistance or greatest attraction of their resultants. The point of contact differs according to the methods of transportation, whether by water, by turnpike, or by railroad. The forces of attraction and resistance include topography, the underlying material on which the city builders work; external influences projected into the city by trade routes; internal influences derived from located utilities, and finally the reactions and readjustments due to the continual harmonizing of conflicting elements. The influence of topography, all powerful when cities start, is constantly modified by human labor, hills being cut down, waterfronts extended, and swamps, creeks and low lands, filled in, this, however, not taking place until the new building sites are worth more than the cost of filling and cutting. . . . Growth in cities consists of movement away from the point of origin except as topographically hindered, this movement being due both to aggregation at the edges and pressure from the center. Central growth takes place both from the heart of the city and from each subcenter of attraction and axial growth pushes into the outlying territory by means of railroads, turnpikes and street railroads. . . . Central growth due to proximity and axial growth due to accessibility are summed up in the static power of established sections and the dynamic power of their chief lines of inter-communication.''

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[1] Page 14.

The ordinary results of such a natural growth will be a more or less irregular city, such as is frequently found in the unreconstructed cities of Europe and the older parts of the older American cities. A good example of such growth is to be found in old Paris, as described, that is, Paris prior to its reconstruction on the plans of Louis XIV, and in the older portions of either New York or Boston.

City plans. As opposed to a city plan which is the result of the natural growth of a city is a city plan definitely framed with certain ideas in view, such as to secure the most available space for building, the best means of communication between the different parts of the city, the best architectural effects, or the healthy housing of the population. Such a plan may be framed prior to the building of the city, as was the case in many American cities and is now the case in German cities, or it may be adopted after the city has developed in order to remedy the defects incident to natural city growth. It is almost needless to say that city plans should be framed prior to the building of the

r. For if cities are permitted to grow in a haphazard way, narrow and crooked streets result, which serve little purpose t the picturesque. The defects resulting from such a method growth can be remedied only by the expenditure of a vast ount of money. This was true of Paris, which is said to have ended over $250,000,000 in the attempted realization of the sent city plan.

Vhenever city plans are consciously framed they will fall in of three classes. These are the rectangular plan, as seen in plan adopted in the early part of the nineteenth century by commissioners appointed to lay out the city of New York; plan which lays great emphasis on diagonal streets and ave- s radiating from a number of chosen centers, as seen in the 1 of Washington; and the concentric circular plan, as seen icularly in Vienna. The rectangular plan, which is unfor- tely, owing to the great influence exercised by New York all American cities, the prevailing plan in the United States, inated apparently in Philadelphia, which was laid out in this way by the engineers of William Penn.

The diagonal street plan is due to the influence of Louis XIV and his landscape gardeners, like Le Nôtre, one of whose followers, L'Enfant, was the originator of the Washington plan. This diagonal street plan would appear to have been derived from the system adopted for laying out roads and alleys in the royal forests of France.

The rectangular plan is probably superior to a haphazard growth. It also "offers the maximum area for building sites"[1] but it makes communication difficult between different parts of the city, does not permit of the freest circulation of air, and does not lend itself to the best architectural effects, since if it is adopted without modification there are no sites on which handsome buildings can be placed so as to be seen to advantage. While the diagonal street plan sacrifices a great deal of space to the streets and avenues for which it makes provision, particularly if these streets and avenues are unduly wide,[2] and while its adoption is necessarily accompanied by the presence of many irregular plots which are not well suited for building purposes, it provides most convenient means of communication for all parts of the city, and permits of the freest possible circulation of air and of the most attractive architectural effects. The centers chosen for the intersection of diagonal streets offer sites upon which buildings may be placed so as to be seen from afar and to the greatest possible advantage.

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[1] Robinson, "The Improvement of Towns and Cities," p. 21.

[2] Thus it is said that in Washington 55% of the city's area is given up to streets and avenues as compared with 35% in New York.

The circular plan, which is so characteristic of Vienna, and traces of which we find in Paris, is due in most instances to the accidents of the growth of formerly fortified places. In cities whose topography permits, it has been in some instances consciously adopted for the outlying sections and when combined with a park system, whose separated portions it may serve to unite, it undoubtedly subserves a useful purpose. It has few advantages, however, to commend it for purposes of convenience in building or of transportation, and it is therefore seldom adopted, except as stated, in any plans of city reconstruction which may be undertaken.

It is seldom the case, however, that cities even when reconstructed or laid out on a plan formulated in advance, conform entirely to one of these plans. In the United States, where few if any of the cities have been reconstructed, the older cities usually contain an older irregular portion which has grown in a haphazard fashion and a new portion or new portions laid out on the rectangular plan after the New York fashion. Boston and New York are instances of such cities. In the newer cities and in Philadelphia, which has kept its original plan except in the outskirts, we find usually the rectangular plan predominating, but even here we often find the prevailing plan modified by the presence of old roads which cut across the rectangular lines. Chicago is a good instance of such a city. Sometimes the rectangular plan is modified by the presence of two axes on which the rectangles are based. For cities laid out on the rectangular plan usually attempt to find their axis in the most important topographical factor of the site chosen. If this is a river there will be only one axis, as in Philadelphia; if it is a harbor or bay the plotting may follow roughly the course of the harbor, as in Baltimore and the lower part of New York. Finally, an original town site laid out in this way along one axis may extend beyond the limits which were originally fixed. The city may, then, if in an American state which has been a public land state, change its axis when it reaches the lands which have been subjected to the work of the United States surveyor, who invariably follows north and south and east and west lines. This is the case, for example, in Denver.

The example of Paris. In the case of cities which have been reconstructed and which are found for the most part in Europe, reconstructed Paris has usually been taken as a model. The reconstruction has usually consisted first, in the destruction of the city walls, which no longer subserve a useful purpose, and the building of streets and avenues upon the site of the walls, and second in the superimposition upon the old city plan of the French plan of chosen centers from which radiate diagonal streets. This has been done in large measure in Vienna. At first the attempt was made to use the site of the old fortifications for a park. But the resulting isolation of the business part of the city made it seem advisable to make use of this unoccupied land for building purposes with the result that the Ringstrasse which circles about the old city is occupied by a series of stately public and private buildings which produce an architectural effect seldom to be found. In the building up of this district considerable use has been made of the rectangular idea.

City reconstruction has often been accomplished also, as in Paris, by a radical replanning of the old irregular portion of the city. Where this is done intelligently as was the case in Paris, the attempt is made both to preserve existing buildings of high character and to place them in an artistic setting. Thus Haussmann says, in his *Memoires* that "he never opened a new street without considering carefully what monuments might be brought into vista. . . . Taking as the basis of this work the old types, which the designers of the seventeenth century had brought in from the forests and country, Haussmann and his engineers considered all the many things which a street is required to do, and the qualities which lead to beauty of effect, and before constructing it arranged the profiles of the section so that all conditions might be met. An agreeable relation between the width of the street and the height of buildings was established. The central pavement was made convex with gutters on either side, sidewalks were provided and, if possible, these were adorned by one or two rows of trees, in the genial old French style. Sculpture, fountains and monuments were introduced in proper localities."[1]

Washington is, with perhaps the exception of Indianapolis, the only city in the United States which has been consciously laid out on this French plan and few who compare Washington with other American cities can fail to reach the conclusion that the Washington plan is vastly superior from almost every point of view to the plan upon which the ordinary American city is laid out.

It is, however, to be remembered that the Washington plan, as it now exists, is the result of the super-imposition of the French diagonal street plan upon the ordinary American rectangular plan. Indeed, a combination of the three city plans which have been described is "accepted, practically, as the ideal by German municipalities, and Milan and Vienna are notable examples of it. Imagine a central point, a plaza—as with happy effect in many an old-world city—or the green or common of a village. It is a grouping spot for the public buildings, or it may be a strongly distinguished natural feature of the site, perhaps an eminence and occasionally even the water front. To this, numerous diagonal streets of primary importance would focus, so cutting irregularly a network of—not oblong blocks, as in New York, but even squares with access to the rear of the houses. And around the outside, or at various periods, place circling parkways, or boulevards—like those for instance of Brussels—whence the diagonal streets may radiate. The result is a wheel, superimposed upon a checkerboard. The hub is the true heart of the town; the spokes are arterial thoroughfares, receiving the heaviest traffic because they are the most direct lines of communication. The rim, or rims, are boulevards and parkways affording convenient means for belt line intercourse. Incidentally, the vista of every street is broken at intervals, for very long street perspectives without substantial termini are not things to be desired. Unless there be plainly visible an eminence or an architectural or sculptural mass, at the end of the street, distance becomes only wearisome.

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[1] Smith, op. cit., p. 287.

"The practical merits of this plan are well illustrated in Vienna, where the daily distribution of population is said to take place more easily than in any other large city. But from the artistic standpoint only, we have here, first, the dominating central point of site or business, putting a stamp upon the city and giving to it that distinctiveness that so many urban communities lack. Upon this is laid all the emphasis that street arrangement can give. Then, in the junction of diagonal streets with the parallelogram's regularity, we have at hand the appropriate sites for adornment with fountains, statues and little parks. The problem has not been solved as if it were that of an exposition. It is a simple, practical and systematic ground-plan available for a busy city or for quiet village. Towns already under way may, indeed, require modifications of it; and a site like Manhattan Island may render the whole impractical; but it is helpful to have clearly in view a general ideal scheme and its advantages."[1]

City planning in Frankfort. Few cities in the world are at the present time devoting so much attention to their plans as is the city of Frankfort on the Main in Germany. Frankfort was favorably situated for undertaking this work in that the city owned a large amount of land outside of its limits. But it had to secure also wide powers of expropriation and the passage of a special law—a remarkable thing in Prussia—by which it is authorized to undertake a comprehensive redistribution of land titles in its suburbs. As a result of the exercise of these powers it may with the consent of half the landholders in interest unite into one plot all the land in a given area, whoever may be its owners. After laying out such streets and squares as it deems necessary, it returns to each landholder a site equal to the size of the plot he had to surrender for distribution purposes, less the proportion taken for streets and squares. Where resort is not had to redistribution the city has to pay for the land taken for streets but the expense to which it is put it is able to recoup by the levy of local assessments on property abutting on the streets which must also bear the expense of maintaining the new street for five years. Taxes on the unearned increment of the land are also imposed on the owners of land when it is sold.

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[1] Robinson, "The Improvement of Towns and Cities," p. 23.

Closely connected with the laying out of the city are the building regulations, which like the increment tax are found in many German cities beside Frankfort. In this city the building regulations divide the city into three zones or districts. In the inner zone buildings with five stories, i. e., basement and four upper stories may be built; in the middle zone four stories, in the outer zone three and in narrow streets only two stories are permitted. In the inner zone seventy-five per cent, in the middle sixty per cent, in the outer fifty per cent of the land may be built upon, while in certain districts even eighty per cent of the land must be left free of buildings. In some districts front gardens on the streets must be provided in addition to the open space otherwise required to be free from buildings. The city also encourages the settlement of its resident population in the outskirts of the city by providing cheap artisans' dwellings and by loaning to building societies and private persons money at low rates of interest to enable them to build such houses. The result of this policy on the part of the city is that while "there are in Frankfort, as in all large and ancient cities, a number of undesirable dwellings . . . the area in which these dwellings exist is constantly decreasing because these dwellings are being transformed into offices. A great many old houses have disappeared owing to the laying out of new streets."[1]

Municipal public works. The plan of a city is of importance, however, not merely because of the effects which it has on architectural, artistic and sanitary conditions, but also because of the relations between it and almost all the public works which a city can undertake. For sewers, the means of transportation both within the city limits and between points within and points without those limits, and the supplying of the municipal inhabitants with the necessities of city life such as water, heat, light and power, must all be undertaken in connection with the streets and avenues for which provision has been made by the city plan.

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[1] Lunn, "Municipal Lessons from Southern Germany," p. 43.

The connection between the topography of the city and these undertakings was not originally of great importance. Municipal sewers were almost unknown prior to the beginning of the nineteenth century. City water supplies, if we may call them such, did, it is true, exist at an earlier date. But they were crude in character, consisting for the most part merely of public fountains to which water of an indifferent character was conducted in insufficient quantities. No means of transportation except such as was to be found in hackney carriages and sedan chairs was provided, and the art of illumination was so undeveloped that no attempt more serious than that which we have seen existed in Paris was made to light even the public streets.

But with the discovery of gas and electricity and the tramway, and the appreciation of the intimate connection between health and the quality of the water supply municipal public works have assumed supreme importance. Conduits must be laid and tracks must be built which must make use of the public streets. All cities in the western European world now do something in these directions to ameliorate the conditions of city life. The work which any city does depends, however, in large measure upon its geographical situation. A city like Glasgow, which is situated near a hilly country blessed with a heavy rainfall, is called upon to do much less in the way of water supply than a city like New York, situated on the sea coast at quite a distance from elevated land and in a district where droughts are not unknown. Other cities, like those on the Great Lakes, which have a copious supply of potable water near at hand, have still less to do than Glasgow. Their work consists merely in pumping into their distributing system from the reservoir at their very doors. Glasgow has to maintain expensive aqueducts, while New York in addition to aqueducts must maintain large storage reservoirs. Other cities, like Hamburg, have found to their cost that their only available source of water supply is polluted because of the great adjacent population and have had to install filter beds. Filtration of water supply, it may be remarked, will probably be necessary very soon in the case of most cities of any size.

What is true of water supply is also true of sewers. Cities situated on tidal waters have merely to run their sewage into such waters. Cities inland, particularly where they are situated on a plain with no great variety of surface may have to make provision both for sewage disposal and for pumping. Such is the case in Berlin, which also has attempted with some degree of success to conduct farms on which the city sewage is used as a fertilizer.[1] Chicago, or rather the drainage district of which Chicago forms a part, is using the water which is drawn from Lake Michigan for purposes of sewage purification, for the generation of electric power which is used both to light the city streets and to carry on private manufactures in the city. Some system of sewage purification, it may be said, will probably have to be adopted by all cities of any size. Even a city like New York, situated on tidal waters which rise and fall to a considerable extent, is beginning to apprehend that there is a limit beyond which the pouring of sewage into the waters of the bay cannot go without danger. Glasgow and London have already been obliged to undertake works the purpose of which is to prevent the rivers on which they are situated from becoming polluted.

So different are the conditions of different cities that an enumeration of the kinds of work given cities do is of comparatively little value, except as an indication of the extent of the work which almost all large cities have been called upon to assume during the last century and a half.[2]

Ad hoc authorities. An important question in connection with the public works of cities is the method of the organization of the force in charge of them. Generally speaking, all of these works are so distinctly city matters that their care is vested in authorities which are regarded as a part of the ordinary city organization. There are cases, however, where for one reason or another there are formed for the management of particular kinds of public works what the English speak of as *ad hoc* corporations, which are distinct from the ordinary city corporation. Such an arrangement is quite common in Great Britain, where special trusts have been formed for the management of docks, as in Liverpool, or for the improvement of the navigation of a particular river in which some one city is specially interested. This is the case, for example, with the Thames as far inland as London, with the Tyne at Newcastle, and the Clyde at Glasgow. These boards or trusts, as they are commonly called, while containing representatives of the city which is particularly interested in the work they are doing, have as well in their membership representatives of other localities or interests. Thus, the trustees of the Clyde Navigation Trust, as organized by the act of 1858, are the Lord Provost (Mayor) of Glasgow, chairman, nine persons elected by the Glasgow council, two each by the Merchants' House, the Chamber and the Trades House, and nine elected by an electoral body of shipowners and harbor ratepayers. These are shipowners of ships to the amount of 100 tons registered in the port of Glasgow and persons who pay at least ten pounds yearly rates to the Clyde Trust.

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[1] Brooks, "The Sewage Farms of Berlin," *Political Science Quarterly*, XX, p. 298.

[2] A description of the work of this sort done by cities can be found in Fairlie's "Municipal Administration."

Somewhat similar arrangements have been made in the United States in some of the cases in which cities have entered the field of the municipal ownership and operation of public utilities. Examples may be found in the former Gas Trust of Philadelphia and the present Gas Trust of Wheeling. Another instance may be found in the Chicago Drainage District, which has its own organization separate from that of the city.

Sometimes a particular public utility is, notwithstanding the local interest it has, taken over by the state government. This is true, for example, of the reservoir system from which Boston and the neighboring cities draw their water supply, and which is under the jurisdiction of the Massachusetts Metropolitan Water Commission, consisting of persons appointed by the state governor. Such an arrangement of the matter is justified in those cases in which the influence of the undertaking transcends the limits of a particular locality. This is the case quite commonly with docks, sewers and water and will unquestionably be the case in the not far distant future with transportation, as it changes from an intra-urban to an inter-urban undertaking. If the organization provided for such enterprises is based on an arbitrary political foundation which is narrower than the social group affected social interests are apt to suffer. No better example of this fact may be adduced than that offered by the present conditions of London. London, it will be remembered, is divided into twenty-nine districts called for the most part metropolitan boroughs. All of these boroughs have under the law the right either to grant electric light franchises or themselves to operate electric light plants. Some of them have such plants. As these authorities may not operate outside of their districts, a large central electric plant is impossible of establishment under the present law, and the interests of the great social group represented by metropolitan London are sacrificed because of the possession by the petty local authorities of powers which they cannot exercise to advantage. Apart, however, from these cases, where social interests transcend the limits of cities, public works interesting cities are usually attended to by the city corporations.

Organization of public works authorities. In the United States alone is the question of the organization of the municipal authorities in charge of these public works an important one. Elsewhere the authorities in charge of these matters are usually organized just as are the authorities in charge of other branches of municipal administration. They are ordinarily committees or boards composed either entirely, as in England, or partly, as in Prussia, of members of the council. In Prussia, as has been pointed out, such boards have as a member a permanent professional expert who aids although he cannot control the board in its action. In England the committee usually has, subordinate to it, an expert, who has a practically permanent position and to whose opinion the committee must in the nature of things defer in most if not in all matters. But this expert is distinctly a subordinate and not a member of the board. In both England and Germany each one of the various branches of public works is usually under the immediate control of a special authority. The fact that in both countries each of these authorities acts under control of the principal city authority is supposed to pre- vent conflicts of jurisdiction. But these conflicts do sometimes occur. Thus in Glasgow some of the committees have prose- ed in the criminal courts the subordinates of other commit- . In Italy a special organization is provided by the law for authorities in charge of the operation of each public utility, h as gas, etc.

n the United States, however, there is no recognized method organizing the authorities at the head of the matters which ve been classified as public works. In some cases the attempt been made to place a number of these public works, particu- y where they have a close connection with the streets, under control of one authority such as a board or director of public rks. This has been done with the idea of securing harmony administration in such matters as streets, sewers and water ply. Where such consolidation has not been made, it some- es happens that just after a street has been paved it has to torn up to permit of the construction of a sewer or the laying of a water pipe. In other cases, particularly in the larger cities, where the work of each of the departments has increased greatly in amount, it has seemed best to provide separate authorities for each of the different kinds of public work, while in one at least, i. e., New York, under the charter of 1901, most of the public works, with the exception of the water supply, are placed in the charge of the presidents of the five boroughs into which the city was divided. Under such an arrangement the several departments of public works were decentralized rather than disintegrated.

No conclusion further has been reached in the United States as to the form which shall be given to the authority which is at the head of either a general department of public works or at that of the special departments such as for streets, sewers and water supply, for which provision may be made. Sometimes we find boards. Sometimes we find single commissioners. Sometimes the members of the boards or the commissioners are appointed by the mayor and council. Sometimes they are elected by the council or the people. Sometimes they have fixed terms. Sometimes they may be removed by the mayor. It is frequently the case, however, that the head of the department of public works has a tenure of office which makes him independent of either the mayor or the council. But his term is short and changes in incumbency are commonly quite frequent.

Municipal ownership and operation. A question with regard to municipal public works which of late has become in the public mind one of great importance is whether these public works should be owned and operated by some government authority, i. e., a city authority, or an *ad hoc* authority, or whether the public welfare is better subserved by private individuals or companies.

When it became necessary for attention to be paid to these matters they were quite commonly put into the hands of private individuals or companies under contract with the municipal authorities to render the services required either for a fixed sum or for rates to be paid by the persons who availed themselves of such services. This policy of private operation was apparently adopted, not because private operation was regarded as theoretically the proper method of attending to the subject but rather because the governmental system did not seem to be sufficiently well organized in many instances even to collect its own taxes, *a fortiori* to enter upon a field which had so many of the characteristics of business.

The nineteenth century, however, saw such an improvement in governmental organization and revealed so many weaknesses in private management, that the field of government operation has been extended so as to include not alone matters which formerly were attended to through the process of contracting with private individuals, but also matters which until recently have received no attention at all.

The great weakness, which private management has all along exhibited, has been a disregard of general social needs and an undue insistence on private profit. On this account it is generally the case that, where considerations of public health and convenience have been paramount, either private has given place to public operation, or resort has been made at once to public management when the particular matter has become so important as to deserve any attention at all. Thus, the care of streets, sewers and wharves has in almost all cases been entrusted to governmental authorities and there is a marked tendency the world over to add works for the supply of water to the city and its inhabitants to the list of publicly operated undertakings.

In England. Within the last sixty years the subject of municipal illumination, including within that term the supply of light to the inhabitants of the city, has attained great importance owing to the discovery of illuminating gas and the electric light, while the discovery of the possibility of using electricity as a means of power has brought into prominence the subject of transportation. When illuminating gas was first discovered the tendency was for the competent authorities to grant to private companies formed for the purpose the right to manufacture it and distribute it to the city to light the streets and to the people to light their houses. When the electric light was discovered it was treated in somewhat the same way. The gas franchises which were originally granted in Great Britain, the first country to use gas, were generally unlimited so far as concerns the term of their existence. On the continent greater care was taken of the public interests. Thus in Berlin the franchise which was granted in 1825 was limited to twenty-one years. In Paris the term was originally fixed at fifteen years but was later extended to fifty years. In 1847, when the Berlin gas company's exclusive franchise expired, the city started its own works in competition with the private company. After quite a struggle between the company and the city an arrangement was reached which amounted to a division of territory.

The city of Birmingham in England under the leadership of Joseph Chamberlain took over the works of the private company which had the gas franchise. When the city made the purchase it found it was obliged to pay for the works as a going business. In other words, it had to pay for the good will or franchise. The payment it had to make was so large as to convince parliament of the inexpediency of granting any more franchises in perpetuity. Therefore, when provision was made for the grant of electric light and tramway franchises the laws passed limited the franchises to twenty-one years duration. This franchise period proved to be too short in the case of the electric light and was later lengthened to forty-two years. At the time the electric light law was passed the movement in favor of municipal ownership and operation had begun, and provisions were inserted in both the electric light and tramway statutes by which cities were permitted with the approval of the central government to operate both these public utilities. Not many cities availed themselves of the opportunity thus granted. But quite a number of franchises for both electric light and tramways were granted to private companies. The tramways first built were operated by horse power. Before the expiration of the franchise period, however, it was discovered that electricity might be made use of as a motive power. As a general thing the companies refused to electrify their roads, since they felt that the unexpired term of their franchise was too short to justify the necessary expenditure. For under the law they were entitled at the expiration of the franchise period merely to the value of their physical plant as it then stood. The consequence was that the people of the cities had a poor transportation service—poor at any rate as compared with the existing state of the art of transportation. The result of this condition of things was a general dissatisfaction with private operation. This dissatisfaction, taken together with the prevalence of socialistic ideas which in the meantime had begun to appeal to many people, led to the municipalization of many public utilities. At the present time more than three quarters of the water works, more than half the gas plants outside of London and half of both the electric light and tramway plants in Great Britain are owned by the municipalities. The development of the municipal ownership and operation of the tramways has been particularly rapid in recent years.[1] Prior to the municipalization of public utilities their operation by companies had been subjected to a far-reaching government control exercised in the main by an organ of the imperial government, i. e., the Board of Trade which aimed at securing good service and at preventing over-capitalization of public service companies.

In Germany. Somewhat the same thing has happened in Germany. The general plan of short term franchises brought about as in England poor service, dissatisfaction with which, combined with a belief in a wide field of governmental activity in general, and a perfectly justifiable confidence in the ability of the municipal governments to occupy this field, led to an extension of the field of municipal activity similar to what has taken place in England. By 1902 in Germany fifty-six of the seventy-three cities with a population of fifty thousand and over were operating their own gas plants, and a very distinct tendency to municipalize electric light plants and street railways is at present noticeable.[1]

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[1] National Civic Federation Report, Vol. I, p. 119.

In the United States many of the cities seem to have acted with wisdom in their original treatment of the questions arising in connection with the gas supply and transportation. They often granted franchises limited as to term, as in the case of the early gas franchises in New York City, or inserted in the franchises granted, provisions reserving to the city the right of purchase on payment to the companies of the sums such companies had actually expended in building and equipping their plants. This was the case, e. g., with a number of the early street railway franchises granted in New York City. The wisdom shown by this city in dealing with the question of street railway franchises was made of no avail by the action of the courts and legislature of the state of New York. Thus the courts held that under the law of the state cities did not have the right to grant street railway franchises and interpreted the statutes passed afterwards to legalize the position of the street railway companies occupying the streets under the illegal grants of the city authorities, in such a way as to recognize that these companies had perpetual franchises which were not capable of resumption by the city. In these ways it would appear that the policy of perpetual franchises was adopted in New York City. At the time of the passage of the charter for Greater New York in 1897 this policy was, however, abandoned for the policy of franchises with a limited term.

In other parts of the country different policies were adopted. Thus in Massachusetts no street railway franchises at all were granted, but the street railway companies were permitted to occupy the streets under revocable licenses. Throughout the middle west franchises with a fixed term, generally rather short, were commonly granted. Considerable trouble and confusion similar to that which arose in New York have arisen everywhere throughout the country by reason of the relations of the cities with the state legislatures. Where companies have not been able to secure what they wished from the cities they have applied to the legislatures, which have in more than one instance favored them to the disadvantage of the cities. Such action has resulted in the insertion in many of the state constitutions of provisions intended to protect the cities. Such, for example, was the provision inserted in the constitution of the State of New York in 1875, which made it necessary that the consent of the city should be obtained before a franchise for a street railway could be granted.

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[1] Rowe, "Problems of City Government," p. 282.

When street franchises were originally granted it was commonly believed that the best service could be secured by providing for competition between companies wherever possible. Reliance upon this method of securing good service was particularly marked in the case of gas companies. Inasmuch, however, as it was found that competing companies consolidated wherever possible and, where actual consolidation was not possible entered into arrangements and combinations under which competition disappeared, it is generally believed at the present time that the régime of monopoly is the only one which is applicable to undertakings making use of the streets. The régime of competition was naturally not accompanied by any serious or effective attempts to regulate or control through government action public service companies. Particularly was no serious attempt made to put any check upon the capitalization of these companies.

Although as a general thing the service rendered by public service companies in the United States has been good, and although in most cases the service has continuously improved, and the price charged for the service has commonly been reduced, a few notorious examples of gross over capitalization accompanied by a decided deterioration in the character of the service, aroused what would on the whole appear to be an unreasonable dissatisfaction with the general scheme of private ownership of public utilities. This dissatisfaction was also due in large measure to the belief, which would appear in many instances to have been justified, that public service corporations were exercising a very corrupting influence not only on the city but also on the state governments. The belief was also commonly entertained by the people of the United States that public service corporations were making inordinate profits and it was felt that the public should obtain a larger share than had been accorded to them in the increased profits due to the lessening of operating expenses which had followed the introduction of such improvements as the substitution of electricity for horse power.

The results of this feeling were in the first place an extension of municipal operation. It was believed that municipal operation of water works had on the whole been successful, and was therefore the proper policy to adopt. From 1800–1900 municipally operated water works had increased from six to sixty per cent of the whole number of water works. Of the fifty largest cities only nine rely on private companies for their water supply.[1] The municipal gas plants increased from fifteen in 1900 to twenty-five in 1906. In 1881 there was but one public electric light plant in the United States, in 1902 there were 818, in 1904, 927, in 1907 it was estimated that there were more than 1,000.[2] The movement has, however, hardly touched transportation, although some cities like New York and Boston have built and own subways which are operated by private companies.

Public control. The more important results of the dissatisfaction in the United States with uncontrolled private operation are to be found, however, in the numerous attempts which have been made to subject private operation to public regulation and control. These attempts have resulted in either local or state regulation. Resort appears to have been made first to local regulation. Local regulation has, however, been in many cases difficult because of the condition of the law. Generally speaking, the law recognizes that cities possess the power of police regulation, i. e., the power to prescribe those things which are necessary for the safety and convenience of the traveling public, such as in the case of street railways a certain headway for cars, the heating and use of closed cars in cold weather, provision for fenders, etc. The law does not, however, recognize that cities have in the absence of legislative authorization the power to fix the rates to be charged for the services rendered. The legislature may either itself regulate the rates charged or delegate such power of regulation to the cities, provided such action does not have the result of impairing the obligation of a contract or of depriving the company of its property through the fixing of a rate so low as to make impossible a reasonable return on the property invested. Inasmuch as both these limitations upon the rate-making power are contained in the constitution of the United States, the determination of their practical effects is ultimately in most cases to be made by the Supreme Court of the United States. In a general way that body has decided that a contract that a certain rate may be charged does not result from the grant by the legislature of a perpetual franchise to a company even though such franchise contains a provision permitting the company to charge a stated maximum rate. The court was led to this conclusion through the application of the principle that the legislative body of the state cannot contract away its police power, which in the case of the state legislature is considered as including the rate-making power. The Supreme Court has also decided that a city, to which the power to regulate rates has been given cannot, when unauthorized by the state legislature, contract away such power by inserting in a franchise granted by it a provision permitting the grantee of the franchise to charge during the franchise term a stated maximum rate, but that under such conditions a change by the city in the rate to be charged does not, although such change is made before the expiration of the franchise term, impair the obligation of any contract. The Supreme Court has, however, held that if a city is authorized by law to fix by agreement with a private company the rate to be charged, a provision in a franchise for a term of years granted by a city to such company, which authorizes the company to charge a stated maximum rate is a contract, and that any attempt on the part of the city to change the rate during the franchise term will impair the obligation of that contract.

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[1] National Civic Federation Report, Vol. I, p. 118.

[2] Ibid.

Even where no such contract exists neither the legislature nor any other authority, state or municipal, may reduce the rate so low as to make it impossible for the company to obtain a reasonable return on the property invested. While the Supreme Court has persistently refused to lay down in the cases which have come before it any general rule as to what is a reasonable return and as to what property is entitled to receive a reasonable return, preferring to base its decision upon the peculiar facts of each individual case coming before it, it has in a recent case, viz., the New York City Gas case, decided that in the conditions existing at the time in New York City six per cent is a reasonable return, and also that in the state of facts of that particular case the property entitled to receive the return was the property used by the company for making gas at the time the law fixing the rate went into effect. The ruling as to what property is to be considered seems to have followed other decisions of the court. It is advisable to ask what are the effects of this ruling. It means in the first place that, if the property has appreciated or depreciated in value as a result of the growth of the city or of improvement in methods of manufacture or operation, that appreciation or depreciation is to be considered in reaching the value of the plant. That is an appreciation of the real estate of the company will tend to keep the rate up, while expenditures on the part of the company which have been rendered valueless by the progress of invention may not be added to the value of the plant so as to affect the rate. Further, it is to be noted that, if a company has placed pipes or conduits in the streets which have afterwards been paved, an increased value is to be given to such conduits because of the fact that they have been covered by pavement, although such pavement has been paid for, not by the company but by either the general public through taxes or the abutting owners through local assessments. This is so because the value of the conduits is to be ascertained from the cost of their reproduction, and that cost must take into consideration the expense of tearing up and relaying the pavement.

The question of what value is to be given the franchise possessed by a company in these cases has not been answered clearly or satisfactorily, although in the New York Gas case the court permitted for the purpose of determining the question of a proper rate, the value to be given to the rights in the streets possessed by the company, which was mentioned in a law of the state authorizing the formation of the company.

Attempts at local regulation of public service companies were unsatisfactory not only because of the inadequate powers possessed by cities but also because of the inefficiency if not the corruption of city authorities. Resort has therefore been had by a number of states, among which may be mentioned Massachusetts, which took the lead in this respect, and New York, to state regulation through a commission or commissions, the members of which are appointed by the governor of the state. The experience of New York is too recent to make it possible to reach a judgment of great value as to the success of state regulation. But the experience of both New York and Massachusetts, where the method has been in operation for a number of years, would seem to indicate that regulation by state commission of both service and price accompanied by methods which prevent over-capitalization, is much more effective than any method of local regulation which as yet has been devised. It is to be remarked that state regulation is subject to the same limitations as local regulation, so far as those limitations are to be found in the constitution of the United States.

Before closing what is said with regard to regulation attention should be called to a somewhat automatic method of regulating price of service which has been tried in some cities. The idea probably originated in an act of the British Parliament which attempted to regulate the South Metropolitan Gas Company of London. This plan of automatic regulation depends upon a valuation of the company's plant and upon preventing future over-capitalization. The valuation once fixed, the company is permitted to pay a certain dividend and to charge a certain rate. If the rate is reduced the dividends may increase in a ratio fixed in the law. A somewhat similar plan has been adopted for the Chicago street railways. A physical valuation has been made of the plant in which engineers representing the city have participated. The company is to receive a certain rate of profit on its investment as so fixed. Any profits made over and above this amount are to be divided in a fixed ratio between the company and the city, which may decide to give its profit to the traveling public in reduced fares.

In Italy. The movement in the direction of municipal ownership and operation does not seem to have made as much headway in either France or Italy as in the countries to which attention has already been directed, although in the latter country a law passed in 1903 gives the cities ample power to adopt the policy if they see fit. This Italian law is interesting as indicating the belief of one great European people in the propriety of the general policy of municipal ownership and operation and their decision, made after investigation and deliberation, as to the method by which the policy should be put into effect in concrete cases. Prior to the passage of the law of 1903 it was recognized that, in the absence of particular laws absolutely forbidding municipal ownership, of which there were several, as e. g., one passed in 1896 forbidding municipal operation of street railways, cities might operate public utilities and indeed almost any industrial undertaking, provided they could not get a private company to undertake the service. During the twenty years preceding 1898, many cities had as a matter of fact entered the field of municipal ownership in one or more directions, so that, when the government investigated the matter in that year, it found that 151 communes had water works, 24, electric power and light plants, 15, gas plants, and one, a street railway plant. The purpose of the law, which was passed five years later, was both to make more clear the legal right of cities to enter the field of municipal ownership and operation and to provide an organization for the discharge of this class of municipal functions more appropriate than the ordinary municipal organization. The law provides that the determination of a city to enter upon the field of municipal ownership is to be made by the city council. The action of the council must then receive the approval of a royal commision composed of members supposed to be expert either from the financial or technical point of view. If the central approval is granted the action of the council must be approved by the electors of the city voting upon the question at a special election. Provision is made for united action upon the part of several communes interested.

Inasmuch as at the time of the passage of the law most of the public utilities in Italian cities were operated by private companies it was felt advisable to accord to the cities the power to buy out these companies. This power is limited to those companies a third of whose franchise period has expired, provided that third is not less than ten nor more than twenty years. That is, the city may never buy out a company before ten years and always may buy it after twenty years from the time it began to render service. A year's notice must be given the company. The price paid the company is to take into account the present value of the plant, any subvention given or received by the city, and the future profits of which the company is deprived as a result of the purchase. These profits are to be ascertained by multiplying by the number of years of the unexpired franchise term not to exceed twenty, the average profit for the last five years as declared to the government for the purposes of taxation. Any agreement reached by the city and the company as to price must be approved by the central government, and in case no such agreement is reached the price is to be determined by arbitrators one of whom is to be appointed by the city council, one by the company and one by the presiding judge of a designated court. Appeal from the decision of these arbitrators may be made to another commission to be appointed by the presiding judge of the court of appeal.

The organization provided by the law for the management of any public utility which may be taken over is based on the theory that the entire administration of each of these matters is to be kept quite separate and apart from that of any other as well as from that of the city generally, and is to be entrusted to persons who are both expert from a technical point of view and pecuniarily interested in the success of the undertaking. The principal officer provided is the director who is to be selected as a result of a public competition by the city council at a session at which two-thirds of the members are present. He is to be appointed for three years and can be indefinitely re-appointed, but may be removed during his term only by a two-thirds vote of the council with reasons stated. The director is both assisted and controlled by a commission composed of an uneven number, not less than three and not more than seven, of members appointed for three years, a third of whom are appointed each year by the city council. Members of the council are ineligible for appointment.

At the time of taking over the operation of any public utility the city council is to adopt rules and regulations for the government of such undertaking which shall provide among other things for the kind of competition by which the director is to be appointed, the bond he is to give, the relations of the subordinate force of employees, the rates to be charged the public for the service to be rendered, and a sinking fund, and may provide for sharing the profits of the undertaking with both the director and other employees. These regulations must be approved by the central government.

The financial administration of the undertaking must be kept separate from the general financial administration of the city although the city council is to vote the budget of the undertaking. Any profits made by the undertaking after making allowance for the shares given to employees, and payments made to sick and old age pension funds which are permitted, are to be paid into the city treasury. Deficits are to be made good by the city. Accounts of the undertaking must be filed in the municipal archives and are open to the inspection of the voters.

The whole administration of these undertakings is subjected to the control of the central government to which must be sent all decisions even as to the appointment and discharge of employees. The central government has the right to disapprove any decision evidently prejudicial to the interests of the undertaking, and to dissolve the commission, either of its own motion or on the proposition of the city council.[1]

In France. The movement in the direction of municipal ownership and operation has not made great headway in France largely because of the attitude of the Council of State, which has ultimately in its hands the determination of the extent of the powers which municipalities may exercise, either as the result of its power to decide appeals to it by municipalities against the decisions of the central administration declaring resolutions of city councils void as in excess of their powers, or on those of individuals against the determination of municipal councils which are alleged by such individuals to be in excess of the powers of such councils. The Council of State has in its decisions taken the attitude that municipalities are not authorized to operate street railways under any conditions, and are authorized to operate other public utilities only where in its opinion private companies will not or in the nature of things cannot adequately attend to the matter or where the service is in its opinion an absolute monopoly. The Council of State has thus several times declared that cities may not provide for insurance, but may make provision for water works always, and for gas and electric light works where some private company is not prepared to take up the matter under conditions which are favorable to the city.

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[1] Bres, "De la Municipalization des Services d'Intérêt Public en Italie," Paris, 1904.

The attitude which the Council of State has taken and which has for its effect the substitution of the discretion of the Council for that of the city has been criticized as inconsistent with the fundamental principles of the French law.[1] It is possible that this criticism may lead to action on the part of the legislature similar to that which has been taken by the Italian legislature in the act of 1903. It is to be remembered, however, that the French law distinguishes between the main thoroughfares, which even where traversing cities are not regarded as under municipal control, and the ordinary city streets which are. So long as this distinction is retained it is difficult to see how the French courts can change their views so as to permit the cities to dispose of city streets in general as a purely municipal matter.

Municipal ownership spreading. A study of the history of the treatment of these particular branches of municipal public works and of the conditions under which private operation has given and is giving way to public operation can hardly fail to convince us that the sphere of direct municipal activity is gradually extending. Reliance upon the individual property owner for the discharge of such functions as paving and sweeping the streets has almost everywhere given way to public action at public expense. Private water works have been very generally replaced by public water works and there is a considerable movement in Germany and England in the direction of replacing private by public gas and electric works, and tramways, while in the United States, France and Italy there are numerous instances of municipal electric light works for the lighting of the street and a few instances of such gas and electric light works for the distribution of light and power to private consumers. The law of these latter countries is being changed so as to admit of greater municipal activity in the operation of almost all kinds of public utilities.

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[1] Ogeran, "Le Développement des Services Municipaux," Paris, 1905, p. 97, et seq.

Comparison of municipal and private ownership. When we come to the consideration of the advantages or disadvantages of municipal as compared with private ownership and operation, it is difficult if not impossible to give a general answer, which is based on anything more than *à priori* reasoning. For the conditions in different countries and in different cities in the same country are so different that it is almost impossible to compare the results achieved. In countries which have made no provision for an effective supervision of private companies we may find private ownership and operation accompanied in particular instances by extremely bad conditions as has been the case with the street railway situation in Chicago and New York. On the other hand we may find in a country like Great Britain, which for a long time has had an effective system of control over private corporations, instances as in the Sheffield Gas Company and the South Metropolitan Gas Company of London, of extremely satisfactory private operation.

Again, we may find in a country like the United States, which has not developed a satisfactory system of general city government, examples of extremely inefficient municipal operation, as e. g., in the case of the Philadelphia Gas Works, while in a country like Great Britain which has a satisfactory system of city government, we may find examples of very satisfactory municipal operation as in the case of the Glasgow tramways, to cite only one instance.

Furthermore, a comparison of good municipal plants on the one hand and good private plants on the other, which are found in the same country, is difficult. For the policy of different cities in the treatment of either private or municipal plants may be quite different. Thus one city may endeavor to make the plant a source of profit to the general treasury of the city corporation, while another may prefer to lower the price of the service when the part of the public which receives the service is benefited. Thus a comparison of the mere price charged for the service rendered is of little value in determining the relative advantages of private and municipal ownership and operation.

The conditions of different plants are so difficult of comparison that the student rises from a study of the question with more or less definite impressions which he might have in some cases considerable difficulty in verifying rather than with clear cut conclusions based upon statistical data. It would seem, however, that, on the whole, good and efficient municipal ownership and operation are perfectly possible if certain general principles of administration are applied. These are that the management of the utility, particularly in its financial aspects, is kept separate after the manner of the Italian law from that of any other utility and from the general financial administration of the city, and is entrusted to expert officials having a reasonably permanent tenure and large powers of discretion and control over the subordinate force of employees, who are not to be appointed for political reasons.

On the other hand, it would seem that uncontrolled private operation is not much to be preferred to indifferent municipal operation, although it must be recognized that too stringent control of private operation has frequently led in the past to municipal operation because private corporations from which too much is demanded in the way of payments to the city or low rates for service rendered cannot give satisfactory service. This is particularly true where the franchise period is a short one.

Further it would appear to be the case that a private company gives generally better service than a municipality, but that on the whole, because a municipality can usually borrow money at a cheaper rate of interest than the investor in private companies is willing to take, the service rendered by a company costs the public somewhat more than municipal service. This is particularly true of the United States where the courts hold that the present value of the property and not the actual capital invested is to be considered in determining the rate which may be charged. It is true that the possibility of supplying the service at a cheaper rate is offset to an extent by the usually greater inefficiency of municipal management. For it is probably true that by and large the expense of production is greater on the part of the municipality than on the part of a private corporation. If the question were merely an economic one it would doubtless have to be answered in favor of private operation. But the question is not an economic but a social one. These utilities are public utilities, the operation of which is conducted not with the idea of producing wealth but of rendering social service. Some of them must be operated at a loss, if we look at the matter from the view-point merely of the cash returns from persons directly making use of them. That loss may be offset by the general benefits which the community receives. It is for this reason that the use of sewers is now generally free to the users of them and that the expense of their maintenance is defrayed from the general resources of the community. It may well be that other matters will in the future be put in the same class. But whether they are or not they are given attention because the needs of the community must be considered. It is of course desirable, indeed necessary, that all these undertakings be managed as economically as possible provided social needs are not sacrificed to economic considerations.

Therefore, the admission of the greater efficiency of private operation does not carry with it the conclusion that private operation is always desirable. For this greater efficiency may have for its effect the increase of private wealth rather than the general benefit of the community. It is wise to endure a slight waste in processes of production in order to secure greater equality in distribution or a greater regard for general social needs.

It is for this reason probably that the almost universal verdict of the world has been rendered in favor of the municipal ownership and operation of water works.

On the other hand, it is to be remembered that the demands on the financial resources of modern cities are so great that the budget of very few cities can stand the drain of many inefficiently and wastefully managed enterprises, no matter what may be the advantages in the direction of greater equality of distribution or greater regard for general social conditions which may be secured. A municipal government must be a very good one and private companies must be very regardless of general social needs to justify a city in undertaking the management of many of these public utilities at the same time.

So far as concerns the United States it may be said that before a city enters upon a wide field of municipal activity in these directions its people should ask themselves whether their political situation is such that they can reasonably expect efficient management, whether their resources are such that they can afford to stand the economic loss to the community as a whole which will probably result from municipal operation, and whether it is not possible to provide such a control over the private companies which may attend to the matter, as will ensure fair treatment of the public from the view-points both of equality of distribution and of regard for social needs. What has been said has been said on the supposition that under existing law the city may enter the field of municipal ownership and operation if it deems it advisable to do so. This is a supposition which, however, cannot unfortunately be made in the case of many American cities. Under the law as it now stands many of these cities are dependent entirely upon private initiative for the operation of these public utilities. This is a position in which they stand practically alone. France is the only country whose law does not recognize that cities possess considerable freedom in this respect, and in France cities are more liberally treated than in the United States. If there is one point in this matter of municipal ownership and operation upon which the opinion of the European world is practically decisive it is that cities should have the power under proper limitations to enter upon the field of municipal ownership and operation. However conflicting the chaos of opinion, statistics, law and judicial decision may be in other respects, there is almost unanimity outside of the United States that cities should have this power; and even in the United States opinion is coming gradually to approximate the opinion of Europe. The importance of the possession by the municipalities of this power can hardly be overestimated. For the knowledge on the part of private companies that this power can and the fear that it will in an extremity be exercised are most effective in securing from private companies about to operate or operating public utilities the adoption of a policy which has regard for the important public and social interests at stake. Where this power does not exist private companies are too apt to consider that they are conducting a merely private business; and in the case of these public utilities private interest and public need are often in conflict.

CHAPTER XVI

FINANCIAL ADMINISTRATION [1]

City receipts. City financial administration may perhaps be best treated under the three heads of Receipts, Expenditures, and Audit. The receipts of cities for a considerable period in their history, since they were reduced to the position of subordinate members of a greater state, consisted exclusively of private corporate rather than public governmental receipts. The history of most cities in Europe had brought it about that they became owners of considerable amounts of revenue-bearing property. From lucrative rights, from the receipts from this property, and from loans, the expenses of the city government were for the most part defrayed. Cities in England and the United States, further, were not before the nineteenth century regarded as sufficiently governmental organizations to be entrusted with the right of taxation. It was the rule of the English la 7 thus that the mere incorporation of a borough did not confer upon it any power of taxation. The extension of the sphere of municipal activity which was characteristic of the nineteenth century, made it, however, impossible for cities to defray the expenses of their administration out of the income of their property, and recourse was had to the taxing power which was very commonly conferred upon them by the legislature of the state in which they were situated.

It is very questionable whether such a complete reversal of the policy of the centuries preceding the nineteenth century was either necessary or wise. For there was, as it turned out, in the streets of cities a new kind of property whose income, if recognized as being at the disposal of the city, would have been sufficient, particularly in the large cities, to pay a large part if not all of the really local expenses of the city government. In the United States, however, the courts very generally refused to recognize the cities as possessing any property rights in the streets, and the legislatures of the states very commonly wasted this property by improvident grants of it, sometimes in perpetuity, to private persons and companies. These grants were in many instances unaccompanied by conditions by the enforcement of which cities could either derive pecuniary profit for themselves as corporations or indirect advantage for their inhabitants through improvement in service. Prior to the commencement of the nineteenth century the municipal authorities had wasted the city patrimony in England and Europe generally. During that century what might have been a new city patrimony of immense value was wasted by the legislatures of many of the states of the United States.

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[1] Authorities: Fairlie, "Municipal Administration"; "Essays in Municipal Administration"; Munro, "The Government of European Municipalities"; Morgand, "La loi Municipale"; Clow, "City Finances in the United States"; in Publications of American Economic Association, third series, Vol. II, No. 4; Schriften des Vereins für Socialpolitik, Vols. 117, 118 and 123; Leidig, "Preussisches Stadtrecht."

Within recent years, however, a more intelligent view has come to be taken of the rights of the cities and at the present time an earnest attempt is being made throughout the United States to secure for the city a portion, at any rate, of the profit which is derivable from street and other municipal franchises.

One reason why this mistaken policy was adopted in the United States is to be found in the belief which has so generally been held in this country as to the functions of government. Whatever may have been the original ideas held on this subject, the experience of most of our states, which at the beginning of the nineteenth century entered into commercial undertakings, particularly those connected with transportation such as canals and railways, was from the pecuniary point of view so unfortunate that it became the fixed belief of the great majority of the people of the United States that political corporations were inherently unable to conduct enterprises whose purpose was pecuniary profit. This belief has had two effects on the finances of American cities: one was that the city government should undertake only those functions whose discharge would not be undertaken by private companies; the second was that if by any chance the city should have entered upon an undertaking which could be made profitable the charges for services should be reduced so as to cover little if any more than the cost of the service. The advantage to be derived from any city undertaking was to be found not in the pecuniary profit from the undertaking, but in the improvement of the welfare of the inhabitants.

As a result of these conditions the receipts derived by American cities from commercial undertakings and property generally, forms a very small portion of their total receipts. It is from the public governmental receipts, such as taxes, special assessments for local improvements, and loans to be eventually paid from the receipts of taxation, that by far the major part of the revenue of the American city comes. Only 2% of all revenues of cities of 4,000 inhabitants comes from public utilities. What has been said of American cities is also in large part true of foreign cities, though in Great Britain and Germany some of the cities derive quite a percentage of their revenue from sources other than taxes. Thus Berlin gets 30% of its total ordinary revenue from such sources, the cities of England and Wales, one-sixth, Paris, 22%. The general principles with regard to the raising of this revenue have been set forth in what has been said with regard to the powers of the city council.

City tax authorities. The organization provided by the average American, and indeed European, city for the collection of its receipts has to do, for the reasons stated, mainly with matters of taxation, including in that term "special assessments." It is of course true that where it has revenue from property this is collected not by the tax officers, but rather by special boards or authorities having charge of particular classes of property such as a water-works board or commission. In some cases the revenue of city property, such as markets, is collected by the chief financial officer of the city. In a few cities where the revenue of city property has been pledged to the payment of city debts the care of city property may be placed in the hands of a debt or sinking fund commission. This is the case in the City of New York. But apart from these comparatively unimportant matters, the collection of city revenue is in the hands of the taxing officers of the city.

Powers of city council. The taxing officers of cities are of two kinds: those having to do with the levy of the tax, and those having to do with the collection of the tax. The officers having to do with the levy of the tax differ very greatly, and differ of course because of the difference in the taxes levied. In all cases, however, there is some authority which ultimately determines the rate of taxation. The general rule is that it is the city council which determines the amount to be raised by taxation and which therefore determines within the law the tax rates. As has been pointed out, however, no city council or city authority has the power to determine what kinds of taxes shall be levied. This is determined by the law applicable to the city. Furthermore, generally the rate which may be levied is also limited. In the United States the rate is often limited by the law either absolutely or at a certain figure unless a popular vote is secured. In France it is also limited by law. This law is passed each year. In Germany it is fixed by law at a figure which may be exceeded only with the consent of the central administration. As a general thing the law permits the cities to impose several kinds of taxes subject to the usual limitations as to rate. In some cases even we find that cities have general powers of taxation, when they may select what taxes they may see fit to. The power of a city to choose what taxes it will levy is sometimes spoken of as "local option" in taxation. It is believed by some that cities should possess such a power.

Prussian cities have wider powers of taxation than are possessed by cities of most other countries. The matter is governed by the tax law of 1893. This law gives to the cities, subject to the provisions of Imperial tax laws, the power to levy taxes of almost all kinds. In a general way it may be said, however, that the German policy is to give to the Empire the power to levy taxes on processes and things, i. e., indirect taxes, to the state the power to levy taxes on persons, i. e., income taxes, and to the localities, taxes on property. The law of 1893, while based upon this principle, expressly permits the cities to impose indirect taxes, taxes on trades and also on incomes, as well as upon land. The power of indirect taxation is subject to serious limitations. Greater freedom is permitted in the case of trade taxes. The law presumes that all cities will have certain revenues from commercial undertakings, fees, special assessments for local improvements levied upon those benefitted thereby and indirect taxes and therefore provides that direct taxes shall be resorted to only to make good the amount of expenditure not provided for from these sources. As a matter of fact, however, a very large part of the revenue of most Prussian cities is derived from the three direct taxes, viz. on land, trades and income. The cities are not given by the law free hand in selecting which of these taxes they will levy, but are confined by law as to the proportion of their total income which they may obtain from either one of these taxes. If they desire to exceed these limits they must obtain the consent of the central government.

In some cases, of which England is a marked example, it is further provided that the taxes which the city may levy must be separated from the point of view of the purposes for which they are levied. Thus there are a [illegible] rate, a school rate and a borough rate. [illegible] England [illegible] which the taxes are levied.

Specific taxes. [illegible]

Europe, sometimes by appointment by the council or by the executive, sometimes by appointment of the executive and council, and sometimes by the central government.

In France and Italy a large part of the city revenue comes from indirect taxes on articles of consumption. These are collected sometimes by the officers of the central government, as in France. The objects on which they may be imposed as well as the rates which may be levied are stated in the law. When collected by the city they are collected by officers appointed by the mayor. These taxes are called *octroi* taxes and are not considered proper taxes from the point of view of public finance.

City assessors. Where, however, the taxes collected are *ad valorem* taxes, that is, where the amount of the tax varies with the amount of property or business upon which it is imposed, the tax administration is more elaborate. Inasmuch as the general or real property tax is on the whole the most important source of city revenue in the United States what will be said as to assessment in this country will be confined to the general property tax. The attempt was originally made to apply to cities the same methods which had been elaborated for the assessment of the state tax on property in rural districts. One of the principles upon which the assessment of these taxes was based was that the assessments should be made by assessors elected by the people subject to the tax. In the case of large cities it was felt that an assessment made by assessors chosen for the city at large would be made by officers too far removed from the control of the people. On that account it was quite commonly the case for the city to be divided into wards in which the voters were to elect the assessors who were to assess the property in that ward. The assessors elected in this way did not receive large salaries, did not devote themselves exclusively to the work of assessment, and usually served for short terms. The process of assessment was so far as concerned the assessment district, really a sort of self assessment.

The natural result of an assessment by different boards of assessors was a varying ratio of assessments in the different districts. Thus the assessors of district "A" might assess property at 50%; those of district "B" at 75% of its real value. Inasmuch as the rate of taxation as fixed by the competent city authority would be the same for the whole city, a tax payer in district "B" would pay to the city for similar property a tax 50 per cent greater than a tax payer in district "A." There would, therefore, naturally be a competition between the assessors of different districts which would gradually lower the ratio of assessment everywhere throughout the city and would ultimately seriously impair the city's financial resources. The experience of the City of Chicago here is very valuable. Owing to the competition between the assessors of the towns of which the city was composed, the ratio of assessments fell so low that it was necessary for the legislature to interfere and by law fix the ratio of value for purposes of assessment at a given proportion of actual valuation. As a matter of fact, the ratio as fixed by the legislature was only 20% of the real value. Inasmuch as this was generally regarded as an increase in the valuation of the assessors, the valuation formerly made by them must have been ludicrously low. The City of New York long ago went through somewhat the same experience but applied a different and much more effective remedy. About 1860 a law was passed by the state legislature doing away with the ward assessors and providing for a board having jurisdiction over the entire city. The members of this board were no longer to be elected by the people but were to be appointed by the city authorities. At the present time they are appointed and may be removed by the mayor whenever he sees fit to exercise this power. They receive quite a large salary, practically devote themselves exclusively to the work of assessment, and are, in a word, really professional assessors, who, different from popular assessors, look at their work, not from the point of view of the tax payer, but from that of the city and as a consequence are inclined to assess property at something like its real value.

An assessment of property at an approximation of its actual value is important in the United States not merely because the current revenues of the city are thereby greatly increased, but also because where a city's debt-incurring capacity is limited to a certain proportion of its assessment valuation, a low assessment valuation lessens its power to enter upon undertakings which may be necessary to the development of the city. Thus, in Chicago, where the debt limit was reached in 1870 "during more than thirty years of expansion, both in population and area, the city has been without means of undertaking upon any adequate scale, such public works as are fitting for a municipality of its size. The burden of any improvements made has been imposed upon the present generation either by way of special assessments or general taxation. In consequence, the city has financially lived from hand to mouth."[1]

The city assessors or equivalent officers in the United States are, like the other administrative officers of the city, sometimes elected by the people, sometimes appointed by the council, or by the mayor, and sometimes by the mayor and council. In addition to the officers who make the assessment, there is in some cases a board of revision, or tax appeal court, to which appeals from the original assessment may be taken. In other cases the appeal goes to the ordinary courts or applications may be made to the assessors to revise their first assessment.

On account of the continuance of the parish as a tax district the methods adopted in England for the assessment of the local rates are peculiar and by no means scientific. In the first place, in the larger boroughs in which there are a number of parishes there are a number of assessment areas under the jurisdiction of different assessment bodies. The difficulties formerly presented by the conditions of Chicago naturally present themselves. Formerly the overseers of the poor, the assessing and collecting authorities, were either elected by the rate-payers of the parish or appointed by the justices of the peace. Now, however, they may be in the boroughs appointed by the borough council. Provision is made for appeals to the court of Quarter Sessions or to the salaried recorder against their valuations both individual and sectional.

In France where the *ad valorem* taxes, i. e., on lands, buildings and trades, consist of percentages of the state direct taxes the valuations used are those for the state taxes. These are made for the entire communal district and in the case of the land tax are permanent in character, being changed only as improvements are made to the property. They are very disproportional and unjust. A recent law, 1898, has attempted to change the system. The assessments are made by commissions the members of which are appointed by the under prefect from lists drawn up by the city council. All direct city taxes are collected in France by officers appointed by the central government, generally from lists drawn up by the city council.

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[1] Scott, "The Municipal Situation in Chicago," Detroit Conference for Good City Government, of the National Municipal League, 1903, p. 157.

In Germany the assessment of *ad valorem* taxes is made by local commisions. Thus the Prussian income tax is assessed for the entire city by a commission consisting of the burgomaster as president and a number of members to be fixed by the central government. These are appointed in part by the central government, in part by the city council. The members appointed by the council must be in a majority. The other members are so far as may be to represent the different kinds of income.

City expenditures. The authorities having to do with the expenditure of city monies may be divided into two classes; the first embraces those authorities which fix the amounts of money to be spent. There are two general systems adopted by the various cities of the United States for organizing the authorities entrusted with the determining of the city appropriations. The first system vests almost all the powers relative to fixing the amount of money to be spent, so far as that is a matter of local determination, in the city council; the second provides a board of administrative officers which has at least coördinate powers with the city council.[1] The first system is the one more generally adopted; the latter system has been established in the City of New York, in a number of the larger cities of the State of New York, all the cities of the State of New Jersey, and in a number of cities scattered all over the country. In some of the cities adopting this second system the board of finances or estimate, as it is often called, has larger powers relative to the amounts of money which may be spent than the council. Thus a greater than ordinary majority vote of the council is necessary to amend the estimates made by the board of finances, or the council is permitted merely to reduce but not increase the estimates made by that body. It is believed by many that it is very desirable to forbid the council to increase the appropriations proposed by the administrative authorities of the city government, and that in this way alone will economical city government be secured. Where a board of estimates or finance is provided, it usually consists of the mayor, the chief financial officer of the city, the president of the council where there is one, the corporation counsel, and other officers who are generally not connected with departments spending large sums of money. In the City of New York it consists, in addition to the mayor, comptroller and president of the board of aldermen, of the presidents of the five boroughs of which the city is composed. These last officers are really at the head of the borough departments of public works (streets and sewers) and naturally, therefore, spend a great deal of money.

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[1] In quite a number of cities in the United States the determination of the amount of school expenses is within limits fixed by the law vested in a school board which acts quite independently of any other city authority.

Where there is no board of estimate the estimates of each department usually are delivered to the head of the finance department who ordinarily revises them before they are submitted to the council. The council usually considers these estimates in committee. The council further is usually authorized to make such changes in the estimates as it sees fit. The following description of the action of the Chicago city council will give a good idea of the work of the city council in the United States where it possesses large budgetary power: "In 1893 the city council of Chicago passed appropriation ordinances on March 27th, after a large amount of other business had been disposed of, covering thirty pages in the printed proceedings. The council took up the special order for the evening, the consideration for the first time of the report of the committee on finances on the appropriations of 1893. Twenty-one proposed changes were defeated, four items were reduced, three were increased, one item was divided into four. Before that session adjourned the budget, covering $11,810,969 in all, over five hundred items, had been enacted."[1] The budget of the larger cities descends into great detail, that of New York City having often more than two thousand items. Finally, the mayor may generally veto the budget as an entirety or the special items therein, his veto being ordinarily overcome by a two-thirds or three-fourths vote of the council.

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[1] Clow, "City Finances in the United States," p. 44; Publications of the American Economic Association, New York, 1901.

Ordinarily the budget of an American city does not include the extraordinary expenditures defrayed from the proceeds of loans or special assessments. The same authorities, which make up the budget of current expenses defrayed from the revenue of city property and taxes, usually have charge also of the extraordinary expenditures. There is not, however, usually any attempt made to estimate beforehand what extraordinary expenditures shall be made each year but each matter requiring such expenditure is attended to as it arises. In the City of New York, however, the charter specifically provides that the board of estimate and apportionment may, without the approval of the city council, expend each year from the issue of bonds, certain specified amounts for the extension of the city streets and school houses, for acquiring new docks, and for increasing the plant of its water works.

Expenditures, both ordinary and extraordinary, are not in the average American city altogether a matter of local determination. This is particularly true of the expenditures relative to matters which are regarded as of state interest. Thus, the city is often compelled by law to enter into undertakings which in the opinion of the legislature are of advantage to it, the salaries of its officers are often fixed with considerable detail, particularly the salaries of teachers. In New York City as in Prussia the minimum salaries of teachers are fixed by the state law and in the case of New York the city must devote a certain proportion of the tax levy to the payment of such salaries. These compulsory expenditures form, sometimes, such a large proportion of the total expenditures of the city as to take away much of the importance of the formal budget making authorities. Thus, in New York City it is said that more than half of the expenditures for salaries and wages are fixed by state law. These compulsory expenditures are enforced by the courts on the application of parties interested.

In England naturally the whole matter of city expenditures is in the hands of the council. Certain expenses are, however, obligatory. Ordinarily as in the United States the provision for such expenses may be enforced by the courts at the instance of persons interested. This judicial control is supplemented by an imperfect administrative control exercised by the Local Government Board in all matters but schools, where the Board of Education is to act. The estimates often go to a Finance Committee which puts them into the form in which they are submitted to the council. But the council where it has adopted no standing order to the contrary may increase as well as reduce them.

In both France and Germany the determination of expenses is made by the council on the proposition of the executive. In France proposals made by the mayor to spend money may be changed by the council by either additions or reductions. In Germany the council may reject the proposals of the executive, when appeal goes to the administrative courts. Provision for obligatory expenses may be enforced on the continent of Europe by the superior administrative authority to which the budget of receipts and expenses must be presented before it has any legal effect. This may be changed so as to make it conform to the law.

City disbursing officers. The second class of authorities having to do with expenditures are those which actually expend the money appropriated. The expenditure of money involves the discharge of two distinct functions: the one consists in the determination of the correctness, from both the legal and the practical point of view, of the claim presented for payment—the determination, in other words, of the two questions: Is the expenditure one authorized by law or by competent authority, and has the service been rendered or have the goods been delivered for which the expenditure is to be made? The second function consists in the actual payment of the money to the person entitled thereto. In the smaller cities of the United States these two functions are quite commonly discharged by the same authority, in the larger they are discharged by separate authorities. Further, in a number of cities, of which New York is an example, the function of determining the correctness of claims against the city is made a part of the duties of the chief financial officer of the city.

Where we find the greatest differentiation in the functions of municipal financial administration, we find three separate and distinct officers, namely, a treasurer or chamberlain, who receives, cares for and pays out city funds, a comptroller, who is the chief financial officer of the city, and an auditor, who examines into the character of claims against the city. As a general thing the city treasurer is elected by the people in the United States. In New York City he is called the chamberlain and is appointed by the mayor. In other cases he is appointed by the council. The comptroller, where that office is completely distinguished from the others, is almost invariably elected by the people or appointed by the council. The same is true of the auditor. It is thus generally true that the financial administration of most American cities has not been brought under the control of the mayor even in those cities in which the mayor has large powers of control over every branch of city administration.

In England payments are regularly made by the borough treasurer, appointed by the council, on orders signed by three members of the council and countersigned by the town clerk. The Municipal Corporations Act provides that an order so made which is not authorized by act of parliament may be removed by writ of *certiorari* on the application of a rate-payer to the Court of King's Bench, which on motion and hearing may disallow or confirm such order.

In France the mayor is the only authority in the city government who can authorize the payment of city monies. He is responsible for his action to the city council, which at the budget session examines his account for the past year with the idea of ascertaining if his orders of payment correspond with the appropriations made. The mayor's accounts must also be submitted to the prefect for approval. The orders or warrants of payment issued by the mayor must be honored by the city treasurer, who is appointed by the prefect or president of the republic from a list containing the names of three persons presented by the city council.

The German system of providing for expenditures is much like the French except that the officer having charge of city funds is appointed by the municipality. As in France, warrants issued by the competent authority, generally the burgomaster, must be honored by the officer who has possession of the funds, usually a chamberlain or receiver, who is appointed by the city authorities.

Auditing of city accounts. The final function in financial administration which deserves attention is that of examining the accounts of officers having charge of this branch of the government. It may be said that this important matter has been almost entirely neglected in the American municipal system. It is true, heads of departments and particularly the chief financial officers commonly report to the mayor or council on the operations of their departments or offices, but on account of the unscientific character of the ordinary city budget and the general defectiveness of the system of accounts as adopted in most American cities the reports, which are often also published, are unintelligible both to the mayor and the council and to the public generally. Beyond this matter of reports no effective provision for a regular periodic examination of city accounts is made. Provision is, however, sometimes made for a special examination which is undertaken sometimes at the request of the city by certified private accountants, sometimes by officers provided by the charter. In New York City, for example, there are two commissioners of accounts appointed by the mayor who make periodic and also special examinations of the city accounts.

The lack of any proper system of examining city accounts has led, within recent years, to the agitation for a state examination of such accounts. Such a system has been provided in one or two states. Just at present the agitation has been directed as well towards the establishment by the state of uniformity in city accounts. The demand is made not only that the accounts of cities shall be examined by a state official but that all the cities within the state shall be compelled to keep their accounts in the same way, the way to be determined by the state officer who has in his hands the examination of city accounts.

The provision in England for the auditing of borough accounts, which include all the financial transactions of the borough government both as borough and as urban district but not as school district, are about as unsatisfactory as those contained in the American law. The Municipal Corporations Act provides for a local audit only. This is made semi-annually by three borough auditors, two of whom are elected by the rate payers, while the other is a member of the council appointed by the mayor. This local audit is as a matter of fact often supplemented by the audit of a professional accountant, employed by the borough, whose report is published. In some cases also by special act of Parliament, provision is made for an audit by the district auditors of the Local Government Board at London. School accounts are always to be audited by the Local Government Board. The law also requires the treasurer, after the second semi-annual audit, to publish a full abstract of his accounts, and the town clerk to forward to the Local Government Board at London an annual report of the receipts and expenditures for the year made up in accordance with a form prescribed by the Board.

In Prussia the rule is much the same as in England, i. e., the audit is a local one, but the accounts are filed with the central government, but in France elaborate provisions are made by the law for a central audit. The mayor's account of his orders of payment, it has been shown, is submitted to the council for its action and to the prefect for his approval. But as the mayor never handles any money the system of audit would be incomplete were no further step taken. Some provision must be made to secure honesty upon the part of the city treasurer, who actually receives and pays out city funds. This officer must every year send in his accounts, which consist of statements of receipts and payments with accompanying vouchers to the Court of Accounts at Paris, whose members are appointed for life by the President. The duty of this authority is to see that the treasurer accounts for all the money he has received either by producing orders of payment issued by the competent authority, i. e., ordinarily the mayor, or a cash balance for the remainder. The Court of Accounts has nothing to do with the legality of the orders of payments issued by the mayor, who alone is responsible for his action and who, as has been said, accounts to the city council and the prefect.

All the methods of accounting which have been described attempt to go no further than to show whether or not money has been spent in accordance with the law. None of them is so show whether the city government has been con- [illegible] an efficient manner. The only possible exception to s statement is to be found in the case of England and those tes of the United States where it has been provided by law accounts of municipal receipts and expenditures, to be made ccordance with a form prescribed by some central state au- ity, shall be filed with such authority. Where compliance this law is made it is possible from an examination of the unts to determine whether a given city is conducting some ch of administration [illegible] omical manner. That is, parison of the wor [illegible] ities is possible. Perhaps reform in munici [illegible] inistration is so desirable he general ad [illegible] on [illegible] ive form of uniform mu- ipal accounting, which shall be so framed as to make it pos- e to determine whether the [illegible] stration of a given city is efficient. The ascertainment [illegible] observance of fiduciary obligations is not sufficient in [illegible] hly complex organization of modern cities. Means to de [illegible] ne the existence or nonexistence of administrative efficiency are every bit as important when cities are entering so commonly as at present the field of industry and commerce.

CHAPTER XVII

CONCLUSIONS

Cities subordinate governments. We have seen that the existence of cities is due in large measure to the congregation in favored spots of large numbers of persons who have been moved to gather at these spots because of favorable opportunities for carrying on occupations incident to the pursuit of commerce and industry; that the larger cities are usually commercial cities whose growth during the past three centuries has been due to the widening of the area over which trade is carried on and to the increase in length of the trade routes of which such cities are the termini; that the effect of industry different from that of commerce is to favor the development of the smaller rather than the larger cities; and finally, that city populations must, in the nature of things, and, as a matter of fact do, have the qualities which characterize the commercial and industrial portions of the community.

We have also seen that in the past city populations have shown themselves incapable of themselves attending to all the functions of government which must be discharged within the municipal area. Only twice in the history of Europe have cities attempted such a task, once during the period when the city-state of the Greeks and Romans flourished, once during the period of the revival of commerce in the middle ages. In the early days of the Greeks and Romans the city-state flourished because it was the only political form conceived of by Europeans. In the middle ages the city-state again emerged from the humble conditions in which it was placed in the states growing out of the Roman Empire, because it was only through the development of a law suited to commercial needs that commercial populations could exist and develop, and because in the conditions of the time such a legal development could take place only through the independent action of the commercial populations of which the cities were composed. In both cases, when the area of commerce widened and economic units expanded, the independent cities fell from their high estate and became portions of greater states which assumed the discharge of most of the functions of government attended to by the cities in the days of their independence. At the time that the administrative system of Constantine was established and again at the time the kings and princes of Europe extended their authority over the cities, hardly a function of government was left to the cities to discharge independently of state control.

The great increase of urban population in the eighteenth and nineteenth and the present centuries, due to the widening of the area of commerce and the introduction of the factory system, has, it is true, caused a revival of the idea of municipal independence. For the very increase of city population has caused new needs to develop largely local in character, to which attention has had to be directed. But the centralization of social conditions in all highly developed communities is gradually depriving these branches of activity of their merely local significance, and causing the states of which the cities are parts either themselves to assume the discharge of these functions or to tighten their control over the cities where they have been permitted still to act.

Cities undemocratic. The gradual centralization of social conditions, to which allusion has been made, is not, it is believed, entirely responsible for the extension of the state's activity at the expense of the city. For a study of the history of cities can hardly fail to convince the student that city populations have been in the past and are now incapable, without assistance from the state, of securing the kind of government which is demanded in the modern western world. City populations, if permitted to develop free of state control, evince an almost irresistible tendency to establish oligarchical or despotic government. Cities are apparently unable of themselves to organize a form of government under which the mass of the city population will not be exploited by the wealthy few. They are therefore not permitted to frame their own charters, which are conferred upon them by the state. This is the policy which has been adopted almost everywhere throughout the western European world.

The only apparent exception to this statement is to be found in those states of the United States in which the Missouri plan of city-made charters has been put into force. The exception here is only apparent because the conditions of suffrage under these charters are fixed, not by the city but by the state, because many constitutional provisions limit the city's powers, such as provisions imposing debt and tax limitations, and protecting the civil liberty of the individual, and because the courts of the states concerned have given a very narrow interpretation to the rights given to cities by this plan.

Not only did oligarchical government develop in most European cities in the time when these cities organized their own form of government, but even in the cities of the United States, where the formal system of city government is framed by the state, a system of boss rule has commonly developed through the operations of extra-legal forces, which must be regarded as the result of the existing social conditions.

The cities of the western world corroborate thus the theory of social causation propounded by Giddings.[1] Giddings' fundamental propositions as stated in his own words are: "First, that the character of the environment determines the composition of a population as more or less heterogeneous, more or less compound, second, that the composition of the population determines its mental characteristics, its potentialities of coöperation, its capacity for progress, its ideals, and its organization as more or less democratic."

Environments in which population can exist are classified as poor or rich from the point of view of their resources, and as accessible or inaccessible from the point of view of the ease with which population may congregate therein. In an environment which is at the same time rich and accessible the population will be large because of the ability of the environment to support a large population and heterogeneous because the population attracted by the resources has been able to congregate there on account of its accessibility.

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[1] "A Theory of Social Causation," Proceedings of American Economic Association, Third Series, Vol. V, No. 5.

"Generalizing," Giddings concludes, "we may say that the heterogeneous community is normally autocratic or oligarchical in organization. If the leaders can inspire fear, their rule is despotic. If they can inspire veneration, their rule is authoritative. If they can inspire admiration and confidence and confer favors, their power is the rule 'of the boss.' "

Now, in cities we have an environment rich in resources and therefore supporting a large population which on account of the accessibility of the environment is heterogeneous in character. For it is composed of persons who have migrated to the city from a distance, apt to be a great one where the city is a large one. In the large cities of the United States, e. g., this population has in large degree come even from countries alien to this country, from the political, religious and racial points of view. To this heterogeneity due to the fact of congregation we have a further heterogeneity due to great inequality in the distribution of wealth and difference in the degree of intelligence. A further cause of heterogeneity is found in the existence of classes due to the ease of class organization in cities and to the fact that so few voters are taxpayers.

The tendency of cities to develop oligarchical government must be borne in mind when the attempt is made to determine the position which is to be accorded to the city in the general governmental system and the organization with which the city is to be endowed.

State control. The interests both of the state as a whole and of the city populations themselves require that the state shall have a control not only over the organization of the city but also over the discharge by it of the functions which may be granted to it. If leaders of the boss type inevitably develop in cities and if city voters are subject to the influence of bribes and favors, the state must see to it that the law of the city organization is so changed as to force these leaders into a position of responsibility and to prevent the venal voter from controlling the city government. If these results cannot be secured in a given city and the oligarchical rule which is actually established, whatever may be the character of the formal system of government, becomes so oppressive and the weaker classes are so despoiled by those of greater strength as to make impossible the conservation of the interests of the city population, the exercise of governmental power by that population must be curtailed and the discharge of more of the functions of government must be entrusted to the authorities of the state which, on account of the relatively greater homogeneity of its population will be more likely to exercise justly governmental power.

The control which it is recognized that the state should have over the city should, however, be so organized that it will be used only when necessary to protect the interests of the state and further the welfare of the urban population as a whole. The experience of the western world would seem to prove that administrative rather than legislative control is the kind of control which will secure the desired results. Administrative control has been most successful when combined with the grant to cities of wide powers as to local matters, powers so wide as to make unnecessary appeal to the legislature when it is desired to extend the sphere of activity or to change the details of the organization, of a particular city.

If, however, it is decided that power may safely be entrusted to a city population some method for its exercise which is suited to the local conditions must be devised. It must be remembered always that in urban populations, which are most heterogeneous in character, particularly so in the United States, social coöperation is difficult and the formation of classes easy; and that the functions of city government are highly technical in character and require for their discharge the expenditure of such large sums of money that unless economy is the rule and great discretion is exercised the resources of the city will be exhausted long before the work which ought to be done is done, notwithstanding the fact that the cities contain the most productive part of the population.

Form of government suited to urban populations. The form of government which most cities should have is one which is calculated to secure under most adverse conditions both social coöperation and technical efficiency. Few city officers should be elected. For the necessity of electing many officers both confuses the voters and makes them the victims of designing and selfish political leaders, while it forces them to judge of the technical qualifications of candidates, which is beyond their capacity. Many elective officers produce a boss-ridden city and an inefficient administration. Furthermore, city populations should not be called upon to vote for city officers elected at large. For groups of persons representing the class interests which are always present in heterogeneous populations find it so difficult to unite, that elections by general ticket frequently result in the election by well organized minorities of candidates not representative of the majority, which has found it impossible to unite.

This conclusion in favor of district elections, while borne out by the experience of Europe, particularly of Great Britain and Germany, is of course not one which appeals to American opinion. In the United States district representation in city government is no longer regarded with favor by most persons who have made a study of American conditions, although most city councils in the United States are, as a matter of fact, elected by districts. The election at large by the voters of the most important city officers such as the mayor, who of late years has been continually increasing in power, and the rapid development of the new commission system of city government, which is based on the general ticket, are indications that the people generally have come to disapprove of the method of district representation. But that district representation is the proper method for organizing the controlling municipal authority is amply proven by theory, experience and present practice.

If, however, American city populations actually find it impossible to secure competent representatives under the district system and have to resort to elections at large, the attempt ought to be made by some system of preferential voting, in accordance with which the voter is permitted to express his second as well as his first choice, the second choices to be accorded weight only when the first choices do not elect, to prevent the election by minorities of officers elected at large. Finally, if power were denied to a council formed of district representatives to increase the estimates proposed by the city executive authorities the efficiency of such a council would be increased since the selfish particularism of the individual members would be diminished.

Organization should be simple. Whatever plan of representation is adopted, the supreme powers of the city should be concentrated in some one authority. Only in this way is it possible for the city population, which finds it so difficult under the most favorable conditions to coöperate, to exercise a control over the city government. When governmental powers are distributed among many officers and authorities each one of whom is within the limits of the statutes a law unto himself, official responsibility for acts of government is so difficult of attainment as to be practically impossible except in a most homogeneous population and in political conditions of the greatest simplicity. The only way to ensure a popular control over city government in the conditions which obtain in modern cities is to focus the attention of the voters upon a single person whose character and views are well known. This can be done practically only under a system of single district representation where the representatives of the single districts form collectively the supreme municipal authority. If the attempt is made to provide a council or commission whose members are elected at large individual gives way to party responsibility. Of course it is true that under the single district system of representation party responsibility plays an important rôle but it does not absolutely displace individual responsibility as is the case where elections are by general ticket.

All attempts to secure popular control over city government will probably be vain which do not base themselves on the fundamental ideas of few elective officers and great concentration of municipal powers. There are many reasons, e. g., for believing that direct primaries combined with numerous elective officers and a system of city government which apportions governmental powers among a long series of independent officers and authorities will do little to remedy existing evil conditions. For the voters do not know and cannot know enough to act intelligently in selecting either candidates or officers. Thus, individual responsibility is lost. Because of the difficulty under direct primaries of keeping up the party organization either party responsibility is lost as well through the disorganization of parties, or where organized parties are retained with the accompanying party responsibility this result is secured only through the expenditure of a vast amount of time and money. Politics becomes even more professional than under other conditions. Administrative efficiency is sacrificed through the more frequent bestowal of office as reward for political service, while the money necessary to carry on the campaign is secured either, by bestowing office upon men wealthy enough to pay the bill or, by selling legislation and privilege. It may be said that this is what now happens in the cities of the United States where direct primaries are not in existence. It is undoubtedly the case that such a statement is true. But there is nothing in the system of direct primaries which is calculated to prevent a recurrence of present evils and there is much to make us fear that their introduction will aggravate those evils. One advantage which direct primaries will have, however, will be to beat in upon the political consciousness of the people among whom they are adopted, through their failure to remedy existing evils, the conviction that popular control of city government is impossible of attainment until the system of government is simple and the attention of the voters is focused on a very few offices.[1]

Municipal suffrage. But a system of city government which is based upon concentration of power and few elective officers may be unsatisfactory if persons who have no permanent interest in the city are permitted to participate in the selection of city officers. It may be laid down as a fundamental proposition that few persons may with safety be permitted to vote at city elections who are not permanent residents of the city. It is of course possible without incurring serious danger to grant, as is done in England, France and Italy the right to vote to nonresidents who pay taxes in the city. For the number of such persons is, as compared with the total number of persons entitled to vote, so small that they can exercise little influence in the elections. If, however, the right to vote in city elections, is, as has been the case in some of the states of the United States, granted to every male citizen of the state who has resided in the city ten days before election, many persons who really have no permanent interest in the city are given a privilege which they find it to their personal advantage to dispose of to the highest bidder. The result, will, in the conditions which exist in most cities in the United States, be the colonization and bribery of voters to an extent which may nullify the action of those persons really interested in the welfare of the city. No form of city government, however excellent it may be, will work satisfactorily in such conditions.

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[1] The objections to direct primaries which have been made would not apply to the bill advocated by Governor Hughes at the 1909 session of the New York Legislature. This bill through the power given to party committees attempts to preserve party organization.

Furthermore, while mere permanent residence in a city is probably indicative of the existence in the average voter of an economic interest in the city, the psychology of many voters is such that they are not conscious of their economic interests unless the appeal which may be made to them reaches that most sensitive nerve center, the pocket. For this reason, if we would secure an economical city government, which is one of the most important desiderata in times like the present when demands on the financial resources of city are so great, we should so arrange our system of taxation as to secure the most numerous possible class of taxpaying voters the amount of whose taxes each year depends upon the way in which the city government is being managed. The American method of imposing the tax from which most of the city's receipts are derived, upon the owners of property, while facilitating the collection of the tax, is accompanied by a most serious disadvantage. This is in most cities, where the number of property owners is very small, the formation of a small class of voters who pay all the taxes, and a large class who directly and consciously pay none. The former are inclined to resist all attempts on the part of the city to discharge even necessary functions of government which involve large expenditure, the latter, not feeling directly an increase in the taxes, a part of which they really pay in the shape of increased rent, hurry the city into undertakings, which, however useful they may be, are in excess of the city's economic resources. Where such a system of taxation is combined, as in the United States, with universal suffrage, the only thing to do is to limit by state law, as is done in that country, the power of the city to levy taxes and incur debt.

Unpaid service. Attention has been called to the fact that classes are very liable to develop in cities, the existence of which adds to the difficulties of city government. If the form and methods of government can be used so as to diminish the evil effects of class interest and cultivate a sense of social solidarity, they should of course be made use of for that purpose. One of the contentions of Gneist, the great student of English political and social institutions, and the founder of the present system of rural local government in Prussia, was that the best way to combat class interest through political institutions, is to oblige the people to assume the active discharge of administrative functions as far as is compatible with administrative efficiency. This principle has been applied, it is believed with great success, by Prussian cities, in each of which hundreds of citizens are daily engaged without pay in aiding the more important city officers in the performance of their duties. No country in the western European world relies in the work of city government so much as does Prussia upon the compulsory unpaid service of her citizens, and in few countries is the work of city government conducted so fully in the interest of the people of the city as a whole. This is so notwithstanding that the three-class system of voting combined with the requirement that a majority of the members of the city council must be house-owners, places the control of the city government in the hands of the larger property owners.

Need of experts. While the attainment of intelligent social coöperation will of itself do much to secure good city government, the best city government will not have been secured unless the organization established for the discharge of municipal functions is technically efficient. The discoveries of preventive medicine and social investigation have shown us that many of the evils both physical and moral of city life are preventable if we act with foresight and intelligence.

The adoption of a proper city plan, well constructed sewers, convenient means of transportation, an ample supply of potable water, good housing conditions, a wise administration of an effective health and building law, and well managed schools which teach what urban populations really need, all these things are necessary if we would have a healthy and happy city life. And all these things require the organization of a permanent and intelligent administrative personnel, who shall exercise the wide powers necessarily granted to them in the interest of the city people, and who shall rigorously refrain from using these powers in the interest of particular classes or of favored individuals.

How to organize such a force is one of the great problems in city government. For if we accord an administrative force a position which is too permanent in character, i. e., too much relieved from popular control, it is apt to become arbitrary in its action and given up to red tape, and may easily degenerate into an engine of oppression, which is used to further individual interest. If we may judge from the experience of the western world we shall probably reach the conclusion that cities, unaided by the state, find it exceedingly difficult to establish and permanently retain such an expert administrative force. The cities of Great Britain, it is true, have succeeded in doing so without such aid, but in the cities of Prussia, where the administrative force is probably more efficient than elsewhere, the qualifications of city officers and their methods of appointment are fixed in great detail by state law. In the United States, on the other hand, it may be said that few if any cities have, even with the aid of the civil service laws passed by the state, succeeded in rescuing from the operation of the spoils system by which American administrative institutions have so long been cursed, any but their most unimportant employees. Even those are appointed for almost purely political reasons in most cases where such action is not forbidden by state law.

Civil service laws. So we may say that probably the best way to secure technical administrative efficiency is through state rather than local action. State civil service laws are more effective than municipal civil service ordinances. Inasmuch, further, as the crux of every law is its administration, it is altogether probable that state civil service laws when enforced by state civil service commissions are more effective in securing efficient employees than when enforced by city commissions.

The merit system of appointment as we know it in the United States, is, however, under the most favorable conditions, not adapted to insure real administrative efficiency in city government since it affects only the subordinate grades of the service. Something must be done to insure permanence and technical capacity in the higher grades. In England, as has been pointed out, this end has been secured through the existence and influence of an enlightened public opinion without resorting to legal provisions restricting the discretion of the city council or its committees in the appointment or retention of subordinates. That such a method of relying upon the enlightened self-interest of city electors or city authorities is ineffective in the conditions existing in American cities the experience of those cities goes far to prove. That something in the nature of state legal provision with regard to the higher officers will probably do much to improve the service is seen from both the experience of American cities in the case of the unimportant city officers whose character has been much improved by the passage and enforcement of state civil service laws, and from that of the cities of Prussia where the civil service law covers the higher as well as the lower positions.

It is doubtful, however, whether the same methods which have been adopted in the United States with reasonable success for appointment to the lower positions can be adopted with advantage in the case of the higher positions. Competitive examinations, upon which the greatest reliance is placed in the system of appointment adopted in the United States and indeed examinations generally, do not evidence the kind of ability demanded of the occupants of the higher positions in a municipal civil service. What is needed is the capacity developed by theoretical training and practical experience, in which judgment plays an important rôle, rather than that evidenced by the successful passing of an examination, which lays too great emphasis on mere memory. Therefore any system of appointment to the higher positions in a municipal civil service which is incorporated into legal provision should lay great emphasis, as does the Prussian system, on the successful completion of courses of study in approved institutions, as well as practical experience in professional work. Furthermore, inasmuch as practical experience in the work of the city itself is just as valuable as, if not more valuable than, any other experience, the law regulating these appointments should secure to appointees as permanent an incumbency in the positions held as is consistent with the other needs of city government. The Prussian law provides that arbitrary removal shall not be permitted but that incumbents of official positions may be removed only as a result of a conviction of crime before the ordinary courts, or a conviction of an act inconsistent with the good of the service, which conviction is to be made, after the officer accused has had an opportunity to be heard and defend himself, by a disciplinary court, composed of his superiors and not subject as to its judgments to the review of the ordinary courts.

Tenure of city officers. In the United States, however, a prejudice against permanent officials which originated in the days when Andrew Jackson foisted the spoils system upon the country, and when the need for technical ability was not so great as at present, has so far prevented the establishment of a permanent service in our cities. This prejudice has up to now been only partially removed by the successful operation of civil service laws.

When the attempt has been made in the United States to protect officers against arbitrary removal, the method which has been generally adopted has been to give them in the law a fixed term of a given, generally a small, number of years. The protection of their right to the office during the legal term has been either assumed by the ordinary courts or expressly granted to them by express provision of law. These courts have in their decisions been governed, as was only natural for such bodies, by the strict rules of law, rather than by administrative needs. The result has been that protected tenure of office during the usually short terms provided has lessened the disciplinary power of superior officers in many instances to the disadvantage of the service, without giving the service the compensating advantage of permanence of incumbency. In the few cases in which life terms have been provided, as e. g., in the police and school service in some cities like New York, the protection of the official tenure, secured through the exercise by the ordinary courts of the power to reverse the decisions of superiors removing inferiors, has on the whole had an even worse effect on the official services concerned, since it has made it practically impossible for superior officers to get rid of notoriously corrupt or inefficient subordinates except through the use of legal proof of the commission of unlawful acts which it is practically impossible in many instances to obtain. The evil effects of judicial review in these cases is particularly marked in the case of the police force. The New York courts would appear to have been convinced of the evil results of their action and have in their recent cases been careful not to extend their power over other branches of the service.

In the case of short official terms thus judicially protected another evil has become manifest, particularly in the case of the heads of the various municipal administrative branches. A mayor having the power to appoint to these positions has usually been extremely reluctant to reappoint persons already incumbents of the offices in question, since knowing he may not freely remove such persons from office he has preferred to appoint new men in whom he personally has confidence. The result is a lack of permanence of incumbency in the highest positions in the municipal services, which makes administrative efficiency in city government well-nigh impossible.

In the conditions legal and political which now exist in most American cities the proper solution of this most important question would appear to be so to limit by state law the appointing power of the highest municipal authorities as to make impossible the appointment of technically unqualified persons. This may be done by requiring where possible from candidates for the more important positions in the municipal service evidence of the successful completion of courses of study and a certain number of years of practical experience. The proposal made recently by the commission appointed to revise the charter of the

City of Boston, that appointment to the higher positions such as heads of departments should be conditioned upon obtaining from the State Civil Service Commission a certificate that in its opinion the candidate is fitted to perform the duties of the office, is interesting for two reasons. First, it is evidence of a feeling that some change must be made in the American methods of filling the higher positions in the city services demanding the possession by the incumbents of technical ability, and secondly it shows that there is a growing belief that large cities are unable without the aid of the state to solve this question.

Furthermore, officers, when appointed, should not be appointed for a fixed term, but indefinitely, subject to removal at any time either by the appointing authority after giving them an opportunity to be heard, the decision of the removing authority not to be reviewable by the courts, or as the result of some sort of disciplinary procedure before a body formed partly at any rate of other municipal officers which should not be governed in its actions by the strict rules of legal proof and whose determinations should also not be reviewable by the courts.

A municipal administrative force constituted in this way would probably become quite permanent in character. If fear were entertained lest it should not as fully as might be, carry out the popular will, and should become too technical in character, resort might well be had to the Prussian device of placing by the side of each of these technically educated and permanent professional officials a small body of citizens who should give their services without pay and who should either exercise powers of control or give advice.

Our examination of the position and organization of cities would lead us to the belief that they should as subordinate members of the state in which they are situated be entrusted with large powers of local concern to be exercised under the control of the state which should be exercised by the administrative rather than the legislative authority; that they should be given by the state a simple compact organization which is under the control of that portion of the city population really interested in the welfare of the city and which should be so framed as to make it by law necessary that persons of technical capacity be appointed to the most important positions with an indefinite term of office subject to be ended only for incompetence or behavior inconsistent with the good of the service.

Municipal functions. Our study of city government should have shown us also that the functions which must be discharged within a city are dependent upon the geographical and social conditions obtaining therein and that if those necessary for the highest development of life in the city are not performed satisfactorily by private initiative their discharge must be assumed by the city itself. No general rule can, therefore, be laid down as to the sphere of municipal activity. In some cities geographical conditions may make it necessary for the state to do work which might in other cities be left to the city government. In some cities conditions may be such that private initiative is to be preferred to governmental action on the part of either the state or the city. Again, in large cities the problem of transportation assumes an importance it can never have in cities of smaller size, and its solution may imperatively demand action which would be unnecessary elsewhere. Finally, the industrial character of a city may make it necessary for that city to take measures for the protection of infant life which would be quite unnecessary and even inexpedient in cities where the prevailing occupation does not call for the services of married women.

It must also be remembered that the character and extent of the sphere of activity of a given city will have a most important effect on its organization which must expand with the expansion of the city's sphere of activity and will undoubtedly be subject in other respects to its influence.

In other words there is only in a very general way a problem of city government. For each city is peculiar and must have an organization and discharge functions suited to its peculiar position. Its very relations to the state are peculiar and its position in the state system must depend on the capacity it has for self-government. If that is small its position will rightly be one of considerable dependence, if large, it may be entrusted with large powers of municipal home rule. What that capacity is, is for the state and not for the city concerned to decide. A city's relations to the state, however, should be such that the state will decide the question not for improper reasons but in view of the most nearly complete satisfaction of the best interests of both the state and the city.

The conditions in some cities are such, however, as to cause us to have grave doubts as to the efficacy of any change in the legal and political relations of the city. We can hardly help believing that the economic and social conditions existing in many of the cities of the United States, e. g., are such as to make good popular city government extremely difficult, if not impossible of attainment, until changes in those conditions have been made. On that account attempts to reform city government in the United States should not be confined to the mere structure of city government nor to the change of its relation to the state. They should be directed as well to the improvement of the economic and social conditions of the urban population.

Almost every cause, therefore, which is dear to the hearts of a certain portion of the people has an important influence in bettering urban life. Election and nomination reform, civil service reform, financial reform, and administrative reform generally, will, if the concrete measures adopted are well considered, improve the political conditions of American cities. Charity reform, child labor and labor reform generally, and reform in housing conditions, the work of neighborhood settlements, and last but not least, the efforts of the various churches and ethical socities, will do much to ameliorate social and economic conditions. There is no improvement in political conditions which does not aid in the amelioration of social conditions; for improvement in social conditions is in many instances possibly only where the political organization is reasonably good. On the other hand, there is no improvement in social conditions which does not make easier the solution of the political problem; for the difficulty of the political problem in cities is in large measure due to the social and economic conditions of the city population.

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